

Agenda Ordinary Meeting

Thursday, 23 June 2022



BYRON
SHIRE
COUNCIL

Agenda Ordinary Meeting

held at Conference Room, Station Street, Mullumbimby
commencing at 9.00am

Public access relating to items on this agenda can be made between 9:00 and 10:30 am on the day of the meeting. Requests for public access should be made to the General Manager or Mayor no later than 12:00 midday on the day prior to the meeting.

A handwritten signature in black ink, appearing to read 'Mark Arnold', with a stylized, cursive script.

Mark Arnold
General Manager

CONFLICT OF INTERESTS

What is a “Conflict of Interests” - A conflict of interests can be of two types:

Pecuniary - an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated.

Non-pecuniary – a private or personal interest that a Council official has that does not amount to a pecuniary interest as defined in the Code of Conduct for Councillors (eg. A friendship, membership of an association, society or trade union or involvement or interest in an activity and may include an interest of a financial nature).

Remoteness – a person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to a matter or if the interest is of a kind specified in the Code of Conduct for Councillors.

Who has a Pecuniary Interest? - a person has a pecuniary interest in a matter if the pecuniary interest is the interest of the person, or another person with whom the person is associated (see below).

Relatives, Partners - a person is taken to have a pecuniary interest in a matter if:

- The person's spouse or de facto partner or a relative of the person has a pecuniary interest in the matter, or
- The person, or a nominee, partners or employer of the person, is a member of a company or other body that has a pecuniary interest in the matter.

N.B. “Relative”, in relation to a person means any of the following:

- (a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descends or adopted child of the person or of the person's spouse;
- (b) the spouse or de facto partners of the person or of a person referred to in paragraph (a)

No Interest in the Matter - however, a person is not taken to have a pecuniary interest in a matter:

- If the person is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative or company or other body, or
- Just because the person is a member of, or is employed by, the Council.
- Just because the person is a member of, or a delegate of the Council to, a company or other body that has a pecuniary interest in the matter provided that the person has no beneficial interest in any shares of the company or body.

Disclosure and participation in meetings

- A Councillor or a member of a Council Committee who has a pecuniary interest in any matter with which the Council is concerned and who is present at a meeting of the Council or Committee at which the matter is being considered must disclose the nature of the interest to the meeting as soon as practicable.
- The Councillor or member must not be present at, or in sight of, the meeting of the Council or Committee:
 - (a) at any time during which the matter is being considered or discussed by the Council or

Committee, or

- (b) at any time during which the Council or Committee is voting on any question in relation to the matter.

No Knowledge - a person does not breach this Clause if the person did not know and could not reasonably be expected to have known that the matter under consideration at the meeting was a matter in which he or she had a pecuniary interest.

Non-pecuniary Interests - Must be disclosed in meetings.

There are a broad range of options available for managing conflicts & the option chosen will depend on an assessment of the circumstances of the matter, the nature of the interest and the significance of the issue being dealt with. Non-pecuniary conflicts of interests must be dealt with in at least one of the following ways:

- It may be appropriate that no action be taken where the potential for conflict is minimal. However, Councillors should consider providing an explanation of why they consider a conflict does not exist.
- Limit involvement if practical (eg. Participate in discussion but not in decision making or vice-versa). Care needs to be taken when exercising this option.
- Remove the source of the conflict (eg. Relinquishing or divesting the personal interest that creates the conflict)
- Have no involvement by absenting yourself from and not taking part in any debate or voting on the issue as of the provisions in the Code of Conduct (particularly if you have a significant non-pecuniary interest)

RECORDING OF VOTING ON PLANNING MATTERS

Clause 375A of the Local Government Act 1993 – Recording of voting on planning matters

- (1) In this section, **planning decision** means a decision made in the exercise of a function of a council under the Environmental Planning and Assessment Act 1979:
- (a) including a decision relating to a development application, an environmental planning instrument, a development control plan or a development contribution plan under that Act, but
- (b) not including the making of an order under that Act.
- (2) The general manager is required to keep a register containing, for each planning decision made at a meeting of the council or a council committee, the names of the councillors who supported the decision and the names of any councillors who opposed (or are taken to have opposed) the decision.
- (3) For the purpose of maintaining the register, a division is required to be called whenever a motion for a planning decision is put at a meeting of the council or a council committee.
- (4) Each decision recorded in the register is to be described in the register or identified in a manner that enables the description to be obtained from another publicly available document, and is to include the information required by the regulations.
- (5) This section extends to a meeting that is closed to the public.

BYRON SHIRE COUNCIL
BUSINESS OF ORDINARY MEETING

- 1. PUBLIC ACCESS**
- 2. APOLOGIES**
- 3. REQUESTS FOR LEAVE OF ABSENCE**
- 4. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY**
- 5. TABLING OF PECUNIARY INTEREST RETURNS (CL 4.9 CODE OF CONDUCT FOR COUNCILLORS)**
- 6. ADOPTION OF MINUTES FROM PREVIOUS MEETINGS**
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Questions with Notice: A response to Questions with Notice will be provided at the meeting if possible, that response will be included in the meeting minutes. If a response is unable to be provided the question will be taken on notice, with an answer to be provided to the person/organisation prior to the next Ordinary Meeting and placed on Councils website www.byron.nsw.gov.au/Council/Council-meetings/Questions-on-Notice

Councillors are encouraged to ask questions regarding any item on the business paper to the appropriate Director prior to the meeting. Any suggested amendments to the recommendations should be provided to Councillor Support prior to the meeting to allow the changes to be typed and presented on the overhead projector at the meeting.

NOTICES OF MOTION

Notice of Motion No. 9.1 First Nations Voice to Council

File No: I2022/675

5

I move:

1. That Council engages with Local Government NSW to implement Resolution 39 on a First Nations Voice to Council passed at the March 2022 Special Conference.
2. That Council engages with local First Nations stakeholders to develop an action plan on implementing Resolution 39 on a First Nations Voice to Council passed at the March 2022 Special Conference.
3. That Council engages with other key stakeholders including local members of state and federal parliaments as part of their action plan on implementing Resolution 39 on a First Nations Voice to Council passed at the March 2022 Special Conference.
4. That Council commits to creating a First Nations Voice to Council by the end of its current term in September 2024.

Signed: Cr Mark Swivel

Councillor's supporting information:

The new federal government has committed to supporting and implementing the Uluru Statement from the Heart. This creates momentum for constructive change embedded in our constitution and a national project of regeneration and healing. In March the Local Government NSW Special Conference supported our motion, unanimously passed by our Council in February 2022, and as amended by conference delegates:

- 39 Byron Shire Council – First Nations Voice to Council That Local Government NSW:
1. Supports the Statement from the Heart's call for Indigenous constitutional recognition through a Voice and that a referendum is held in the next term of federal parliament to achieve it.
 2. Develops a kit in partnership with the Traditional Custodians to assist councils to hold public forums to inform their communities about the Statement from the Heart and the proposed referendum.
 3. Develops an advisory body model for a First Nations Voice to Council for local Indigenous communities; with the structure, terms of reference and membership

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9.1

for the First Nations Voice to Council to be determined by consultation with local Indigenous community stakeholders including Local Aboriginal Land Councils, native title holders and elders in conjunction with local councils.

- 5 4. Encourages local councils to develop a relationship with their local First Nations communities, especially the Traditional Owners/Custodians, and to develop with them ways in which they can provide input into the decisions of council.

Further Background – from BSC February 2022 Ordinary Meeting

- 10 The Uluru Statement From The Heart sets out a clear vision for indigenous Australia to play an active consultative and advisory role in our government. The Statement says: 'We call for the establishment of a First Nations Voice enshrined in the Constitution'.

- 15 Federal and State governments are yet to implement this transformative, inclusive innovation, perhaps because of the aspiration to change the federal constitution, a typically complex and contested process. However, there has been some movement on treaty proposals and negotiations especially at local government level.

- 20 Local Councils with their immediate community engagement and responsibility for land use are uniquely well positioned to facilitate the better integration of indigenous communities into our processes of government. The model could be designed so that it operates as an advisory body or consultative committee. Nevertheless, this model, operating at the grass roots, could encourage long term constitutional change. Remember that the Statement says: 'We seek constitutional reforms to empower our people and take a *rightful place* in our own country. When we have power over our destiny our children will flourish. They will walk in two worlds and their culture will be a gift to their country'.

- 25 The First Nations Voice to Council could review all policies and decisions for their impact on the local indigenous community. Councillors would need to consider the
- 30 recommendations made by the Voice to Council and respond to questions raised. Membership of the Voice to Council could for example have 3 representatives from the local indigenous community including representatives from the Land Council, Native Title holders and community members with professional expertise that could assist in analysing council proposals and projects.

- 35 See The Uluru Statement From The Heart - <https://ulurustatement.org/the-statement>.

Staff comments

by Esmeralda Davis, Acting Director , Corporate and Community Services:

Council officers will stay informed and engaged in the LGNSW's development of the First Nations Voice to Council.

- 5 We acknowledge there has been significant progress made on building relationships between local government and Aboriginal communities. There was a considerable amount of work undertaken by LGNSW, the NSW Office of Local Government, the NSW Aboriginal Land Council, Aboriginal Affairs NSW, NSW Planning and Environment and Aboriginal community development officers to encourage the inclusion of Aboriginal communities in council decision-making, service development and delivery. This joint initiative called, Collaborate NSW resulted in the development of a resource kit and website to support councils to strengthen relationships with Aboriginal communities. These resources are available via the [Collaborate NSW website](#).

- 15 Currently, Council has a Memorandum of Understanding (MoU) with Arakwal Corporation. The first MOU was formally adopted in 2013 and follows on from the 1998 Heads of Agreement between Byron Shire Council and the Arakwal People. The purpose of this agreement is to strengthen relationships and create meaningful change on projects and services of significance to Arakwal and Council.

- 20 Currently there is no existing agreement in place with all Traditional Owners of the Byron Shire.

- 25 It is critical that local Aboriginal community members and Traditional Owners are consulted in any process recommending changes to engagement with First Nations people. Without shared agreement with local Aboriginal stakeholders, Council officers will not be able to co-develop an action plan or create a First Nations Voice to Council. Due to the complex and sensitive nature of this work, it may be difficult to commit to a firm timeframe for these outcomes.

This engagement will inform future advocacy efforts and strategic conversations in the lead up to the referendum on Constitutional recognition.

Financial/Resource/Legal Implications:

- 30 Can be accommodated within existing resources.

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NOTICES OF MOTION

9.1

Is the proposal consistent with any Delivery Program tasks?

Yes

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community	2.1: Support and encourage our vibrant culture and creativity	2.1.6: Develop strong and productive relationships between the Aboriginal community and Council	2.1.6.1	Build and maintain existing relationships with identified stakeholder groups

Notice of Motion No. 9.2 Strengthening our Festival Culture

File No: I2022/676

5

I move:

1. That Council creates and implements an action plan to enable and encourage small festivals to operate in Byron Shire.
- 10 2. That Council reviews small festival proposals currently pending or recently determined to enable these festivals to be conducted in the period 2022-24.
3. That Council reviews its policy and processes to ensure we support enabling festivals to enhance our creative industries, provide jobs and opportunities for creative companies and workers, and to contribute to community well-being.

15

Signed: Cr Mark Swivel

Councillor's supporting information:

20 Festivals are key to Byron's community - our identity, creative output, economy and well-being. Small festivals complement the opportunities for artists and sector workers in large festivals and other settings. Small festivals are fundamental to our creative industries eco system - in music, film, visual arts, food and more. Creative industries are not the 'core business' of local government but we can play a key role in fostering artist livelihoods, creating work and expanding cultural visit experiences / opportunities.

25 Anecdotal reports from small festivals indicate a range of challenges in executing projects e.g. in finding locations for festivals and receiving timely decisions to allow project delivery and longer term business planning. Issues include uncertainty around permitted uses and responsible authorities (complicating decisions and delaying projects), the different rules
30 for non-profit and for profit companies (noting that margins for arts sector companies are invariably small), the impact of timelines and lack of clarity (blowing out project schedules).

The small festivals of today are the 'institutions' of tomorrow. Bluesfest began as a modest event at Belongil fields. Homebake was a template for indie music festivals in the 90s.
35 Many many of our artists got their break at Mullum Music Fest. The potential is enormous!

Festivals provide an opportunity to use assets like the Cavanbah Centre for industry and community benefit and maximise return on a property run at a loss since inception. The economic benefits to the bottom line of council and the creative economy should be key

when considering the applicable planning regulation / constraints. As we recover from the pandemic and floods, we should do all we can to promote the creative economy by supporting small festivals. The new federal government has committed to greater funding and support for the arts and creative industries. Byron Shire Council can build on this momentum and deliver positive results for our creatives and our community.

Staff comments

by Shannon Burt, Director, Sustainable Environment and Economy:

This Notice of Motion seeks an action plan to assist small festivals, also for staff to review current or pending small festivals to enable these to occur during 2022/24, and a review of Council policies applying to small festivals.

A definition of 'small festival' is not provided and is needed to clarify the terms of the Notice of Motion. This would be helpful for staff to understand particularly for point 2.

To assist clarification, under the existing Bluesfest Development consent as modified (10.2014.753) the following event definitions apply to set maximum persons:

- Small event: not more than 2,000 people on any event day
- Medium event: Between 2,000 to 15,000 people on any event day
- Large event: Between 15,000 to 30,000 people on any event day

General staff response otherwise to the above Notice of Motion points follows:

In the 2018 calendar year, Byron Shire Council approved or supported around 90 events over 170 event days and with over 372,000 attendees.

To put this in perspective, event attendees represent more than ten times the shire's resident population. This does not include events which occur in already approved venues or those events, weddings or filming that are not approved by Council or that Council has not been notified of.

Events provide a wide range of jobs and other economic benefits to our small and medium sized enterprises. They are an integral part of the cultural fabric of the shire and the buoyancy of the local economy.

The events industry plays an important role in contributing to our destination image, visitor experience and length of stay. Events potentially help overcome seasonal visitation troughs.

The economic impact of these events is difficult to measure; however, in 2018 our six biggest events had an estimated economic impact of over \$100 million

Further, a tourism product audit of the Byron Shire in 2019 identified events and festivals as one of the top 3 tourism product categories.

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9.2

Since end 2019 due to COVID-19, the event and festivals industry has been significantly impacted. Events and festivals could not occur for the most part during 2020/2021.

- 5 It is only now that we are seeing a return to a pre covid situation starting to occur - BluesFest 2022 held in April, and Splendour in Grass 2022 to be held in July. We are also seeing inquiries and applications about events and festivals at Council on the increase. These being supported by the many industry specific and other grants available.

- 10 In recognition of the importance of events and festivals to the local economy (as part of the larger creative industry sector operating in Byron Shire) Council has a dedicated Events Team. The Events Team offers a “one stop shop” for event-related enquiries at Council. The team provides advice and information about local venues/sites and related regulatory and compliance requirements for use of these, amongst other things.

Council also has in place a number of policy and supporting documents to otherwise inform and assist event and festival organisers with event and festival obligations and management in Byron Shire:

- 15 [Events - Byron Shire Council \(nsw.gov.au\)](https://www.nsw.gov.au/what-to-do/visit-byron-shire)

[Event-Guide-2020-web-version \(2\).pdf](#)

[Events on Public Land - Byron Shire Council \(nsw.gov.au\)](https://www.nsw.gov.au/what-to-do/visit-byron-shire)

[Documentation and records to maintain when planning an event - Premier & Cabinet \(nsw.gov.au\)](#)

- 20 For several reasons including land tenure/ownership, governance, legislation, and statutory matters like land use controls, not all events and festivals are able to be accommodated on land in the Byron Shire. The complexities of site use can differ greatly from site to site, particularly where Council does not own and or control the land. Recent examples of this have been reported to Council.

- 25 Notwithstanding the above, there are a limited number of outdoor sites/venues with existing approvals that cater for a range of size of events/festivals:

North Byron Parklands (private) and Bluesfest site (private) have comprehensive approvals that enable a diversity of type and size of events and festivals.

Otherwise:

- 30 The Cavanbah Centre at Ewingsdale (Council) has a limited approval. Council staff are currently considering options for future use of the site which includes events and festivals and will prepare a development application as required.

Mullumbimby Sportsground (Crown land) has a limited approval.

Byron Surf Club (Crown land) has a limited approval.

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9.2

Red Devils Park (Crown land) is without an approval although staff have strongly encouraged the land managers to seek approval given past use for events and festivals.

5 Other land throughout the Byron Bay Town Centre which is highly sought after for many types of use - like Byron Bay Rail Corridor and Foreshore areas remains restricted in use (precluding commercial events and festivals) due to the above highlighted reasons.

To this end, staff remain in conversations with respective landowners/managers about potential future uses of these sites, in line with the authorised uses under their respective plans of management given their community use designation and local significance.

10 Further the lead time for event applications and approvals can be lengthy. A fact that many event and festival organisers do not take into consideration when planning for their event or festival. There are also external agencies that need to be involved during the approval process.

15 Our Events Team strongly encourages events and festival organisers to engage very early with Council at their planning stage prior to committing to dates a site and a marketing plan. This is so they can fully understand the process ahead for them and risks associated with it.

The flow chart below from the Events Guide exemplifies this.

COUNCIL'S EVENT APPLICATION AND APPROVAL PROCESS

There are a number of factors that determine which application and approvals your event will need. Where the event is being held, the size of the event, and the activities involved all play a role. If you are intending to hold an event in the Byron Shire, follow this process:

6-12
months
prior

- Fill in the short event introduction form on Council's website and send to Council as soon as you start to plan your event. We will contact you to discuss your proposal, which will determine whether you require a Development Application (DA), temporary licence, or other Council approvals.

4-6
months
prior

- Submit all required paperwork to Council. This could be a development application, an event application, or other form depending on the scale, scope and location of your event. Traffic control information could be required at least 4 months prior to your event. Your paperwork will be distributed to the relevant teams within Council. Commence local custodian engagement.

2
months
prior

- Meet with a member of Council's event team in person or via phone to discuss any additional requirements, feedback, fees or conditions.

1
month
prior

- Submit to Council a list and permit numbers of any food businesses at your event.
- Sign and return any required agreements / licences to Council.

Event
day

- Provide access for Council staff to undertake any relevant inspections at your event site if required (fees may apply).

1
month
after

- Complete the post-event survey online.
- Meet with a Council staff member in person or via phone for your event debrief.

Financial/Resource/Legal Implications:

5 The draft Operation Plan (OP) and Budget 22/23 currently on exhibition does not include a specific action or associated budget to deliver an action plan and or review of policies applying to small festivals. Inclusion of new activities in the OP to reflect this work, and a budget allocation will be necessary should this notice of motion be supported by Council.

A review of the Events on Public and Private Land Policy is scheduled as part of the work program associated with the required Council policy review program.

Is the proposal consistent with any Delivery Program tasks?

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community	2.1: Support and encourage our vibrant culture and creativity	2.1.7: Support range of existing, emerging and major events	2.1.7.1	Continue to support event organisers in the delivery of events.

Notice of Motion No. 9.3 Flood problems at the end of Azalea Street

File No: I2022/677

5

I move:

- 10 1. That Council notes that residents at the end of Azalea Street have experienced flood problems often in recent years, culminating in houses being flooded including with raw sewage during the 2022 flood event.
- 15 2. That Council receives a report on at least three issues visible to the trained eye in relation to these problems, namely:
 - a) the hydraulic influence of the private driveway in diverting floodwater out of the creek that drains Tallowood estate (shown in image #1 below) and the potential for that crossing to be reconfigured to occupy less waterway area and thus send less water onto Azalea Street;
 - b) the reconfiguring of the overflow from the SPS 4006 so as not to deliver overflow towards houses #34 to 38, via the stormwater pit shown in image #2 below; and
 - 20 c) the potential for adding or increasing emergency storage volume and for providing backup power during blackouts, so that sewage doesn't overflow as it did in 2022.

25 Signed: Cr Duncan Dey

Councillor's supporting information:

30 Image #1 below is taken from the state's SIX Maps system, set to show topographic information. The light blue line is a creek that drains much of Tallowood into the Brunswick River. Its form has been altered including by the introduction of a causeway across it, roughly on the route of the dotted lines on Image #1.

Azalea Street ends roughly where shown on the map. The lowest three properties between that end point and the Brunswick River are #34 to #38. Numbers #34 and 36 are flooded by water crossing Azalea.

At the end of the cul de sac and only a few metres from the causeway is a Council operated Sewage Pump Station 4006. SPS's have arrangements for emergencies such as pump failures and power blackouts. These can include a short-term storage chamber. Whether there is a chamber or not, the SPS has an overflow such that when storage capacity is exceeded, further sewage is let go by gravity rather than backing up the sewer pipes. For this SPS overflow is into the stormwater pit adjacent to the SPS, as shown in Image #2 below.

When the low-lying houses in Azalea Street flooded in 2022, residents complained of the stench of sewage. I have no doubt this occurred. That is unacceptable. This motion seeks a way forward.

Staff comments

by James Flockton, Infrastructure Planning Coordinator, Infrastructure services:

Further investigation and recommendation can be provided to Council once staff have completed sufficient investigation to provide a detailed and measured response.

Cameron Clark, Manager Utilities, Infrastructure services:

Further investigation and recommendation can be provided to Council once staff have completed sufficient investigation to provide a detailed and measured response.

Financial/Resource/Legal Implications:

To be provided as part of further reporting.

Is the proposal consistent with any Delivery Program tasks?

No

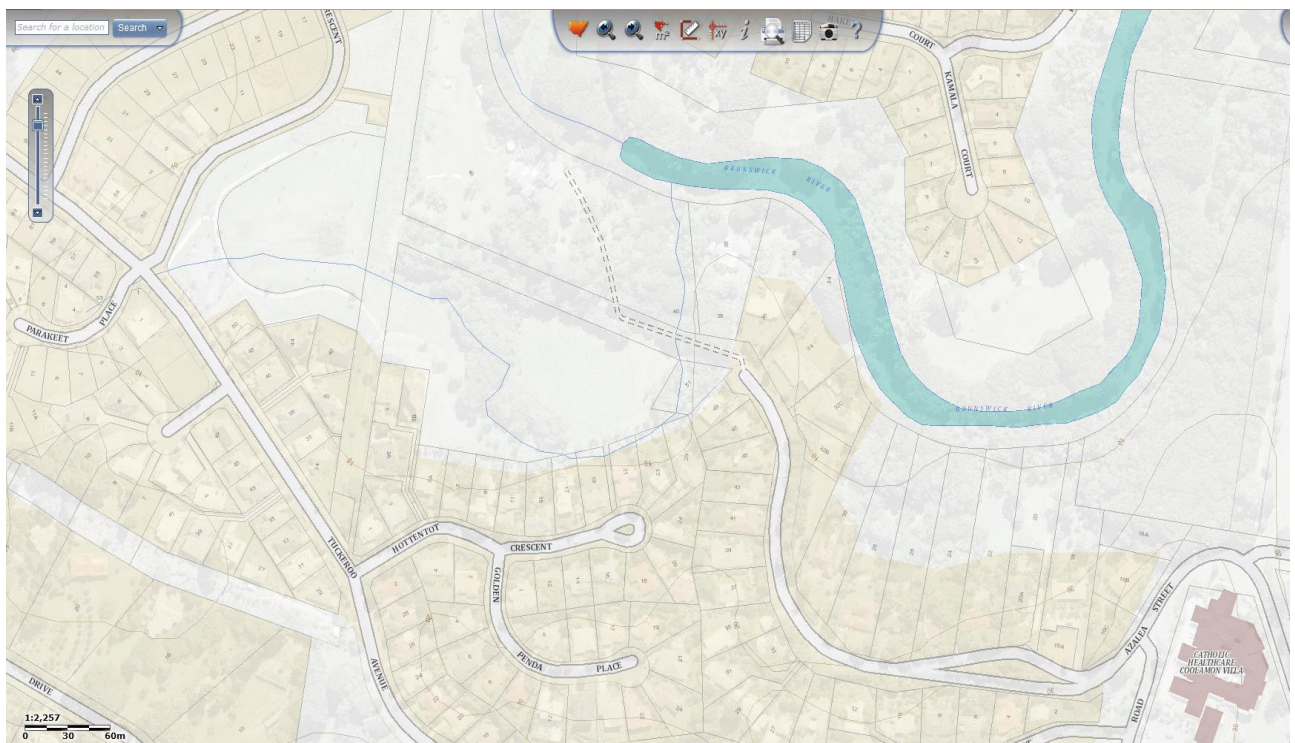


Image #1: SIX Maps of Mullumbimby around Azalea Street



Image #2: the SPS with its overflow

Notice of Motion No. 9.4 Fill for urban development in the Marshalls Creek floodplain

File No: I2022/678

5

I move:

- 10 1. That Council notes that Section 6.2 of the Marshalls Creek Floodplain Management Plan (adopted by Council on 25 November 1997) identifies management practices for South Golden Beach and Ocean Shores North including “*place a moratorium on filling individual lots until sufficient investigation has been undertaken to identify and quantify appropriate stormwater ponding points*”.
- 15 2. That Council receives a report about fill on floodplains, including on floodplains like Marshalls Creek where it appears a moratorium preventing fill has failed to do so.
3. That the report also explains what shortfall in our planning systems allowed fill to be placed in 2022 under DA 10.2017.749.1 for a slab-on-ground dwelling at 1 Kallaroo Circuit OCEAN SHORES, and how that shortfall can be remedied.
- 20 4. That Council notes the three main reasons why floodplains require special attention to avoid filling, namely: That
- 25 a) fill can prevent the passage of floodwater during major floods and may thus raise flood levels upstream of the fill site;
- b) fill occupies airspace that would otherwise attenuate flooding further downstream; and
- c) fill sends runoff outwards from the fill footprint, often onto neighbouring properties as happened at Kallaroo Circuit during construction and as is likely to continue permanently after completion of the dwelling.

30

Signed: Cr Duncan Dey

Councillor's supporting information:

The agenda for Council's meeting of 26 May included Question 15.2 and Answers to my six questions. Since then, Councillors have received photos showing one of the houses neighbouring this site with water several centimetres of water over the veranda and water almost into the house. This was due in part to runoff from the construction site at 1 Kallaroo Circuit. At least two other adjacent properties have also been affected by runoff from the site, according to the owners.

The DA was approved as proposed without fill but with a minimum floor level well above that anticipated by the applicant, whose builder specialises in slab-on-ground Coral Homes. It was later contested that fill was approved by implication of the higher floor level.

As explained in Answers to my Questions 2 and 3 of 26 May, there are no-fill methods of achieving the higher floor level but the one chosen was to introduce fill to the site. About 400mm of fill now covers most of the property. The concrete foundations of the two dwellings and the surrounding ground between and around those foundations are now high above the adjacent properties.

Consequences are already appearing, including severe water logging of many neighbouring Lots. The property has six neighbouring Lots and no easement to drain through any of them.

Approaches to Council, to the Private Certifier, to the Builder and to the owner have all failed to overcome the fundamental problem introduced by this development, or to identify any party responsible for what appears a major defect within the planning process.

The aim of this Motion is to avoid a next time.

Staff comments

by Shannon Burt, Director, Sustainable Environment and Economy:

Staff responses to the individual points of the notice of motion follow:

1. The management practice numbered 3 (i.e. *"Place a moratorium on filling individual lots until sufficient investigation has been undertaken to identify and quantify appropriate stormwater ponding points"*) from Section 6.2 of the Marshalls Creek Floodplain Management Plan adopted by Council on 25 November 1997 (MCFMP 1997) should be read in context with the issues identified in the same section, (i.e. *"There is community concern that the levee has affected local drainage paths such that ponding now occurs in protected areas"*).

It is staff opinion that the recommended moratorium on filling individual lots is in regard to ponding points in the South Golden Beach area protected by the levee indicated in exhibit 5 of the Marshalls Creek Floodplain Management Plan (see diagram 1 below).

This area of the Marshalls Creek Floodplain Management Plan has been superseded by the North Byron Floodplain Risk Management Plan (WMAwater, October 2020)

BYRON SHIRE COUNCIL

NOTICES OF MOTION

9.4

adopted by Council on 24 September 2020 (NBFRMP 2020). Section 8.1.7 of the NBFRMP 2020 states *“The recommended no fill zones from the 1997 Marshalls Creek Floodplain Management Plan that was assessed in Development Scenario CD01 are not recommended for inclusion in the DCP2014”*. Section 8.1.7 also states that *“The footprint of the recommended areas where fill should be avoided can be seen in Figure U 5 of Appendix U”* (see diagram 2 below). It is staff opinion that the subject property at 1 Kallaroo is not in a fill exclusion area.

2. Fill on floodplains are assessed in the floodplain risk management process. In particular section 8.1 of the NBFRMP 2020 provides commentary of the assessment of potential landform changes in the catchment resulting from future development. For any additional reports, survey work and or plans to be prepared/undertaken the result of this NOM, staff and budgetary resources would need to be allocated in the 2022-23 budget.

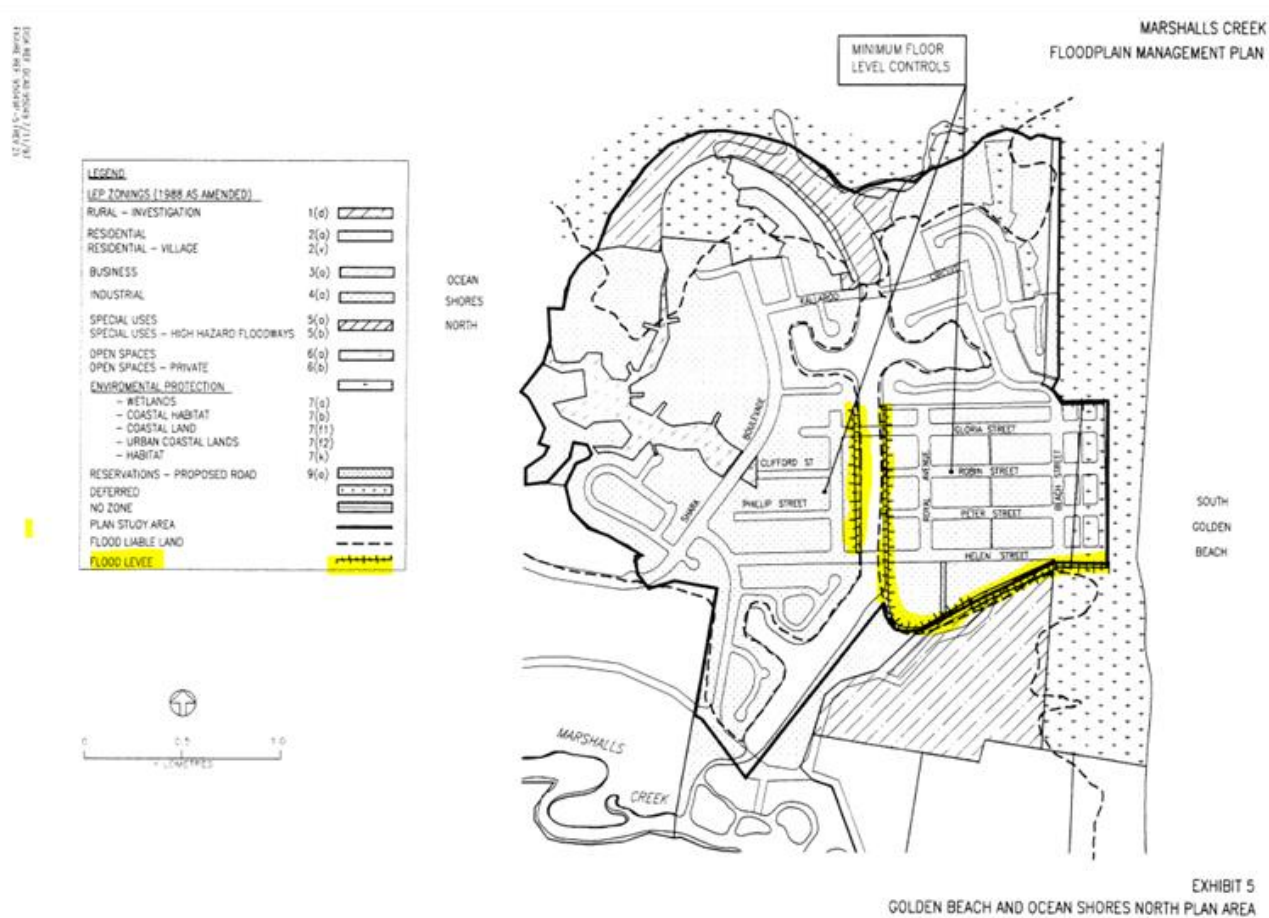
3. It is staff opinion that there was no ‘shortfall’ in the planning systems and or the assessment of the development application DA 10.2017.749.1. For any additional reports, survey work and or plans to be prepared/undertaken the result of this NOM, staff and budgetary resources would need to be allocated in the 2022-23 budget.

4. It should be noted that the landform in the vicinity of 1 Kallaroo Circuit, Ocean Shores was filled, by up to 2.5m depth of filling during the “FERN BEACH ESTATE” subdivision creating this and the adjoining allotments in the late 1990s, to above the 2050 1% AEP flood level (see diagram 3 below). It should also be noted that the landform at the completion of the subdivision works was graded to generally fall to the frontage roadways and that the finished site levels of 1 Kallaroo Circuit Ocean Shores (Lot 87 DP1036242) was slightly higher than the adjoining lots (see diagram 4 below). No 1 Kallaroo is one of the last remaining lots to be developed in this estate. It would appear from inspections that surrounding properties have also been incrementally filled since they were developed for residential purposes through slab on ground constructions, driveways, garages, landscape and garden bays, top dressing, and the like.

If a detailed survey of the estate and ground levels was undertaken, it would in all likelihood show that the ground levels are no longer the same as what they were when the land was first released as vacant lots. Notwithstanding, such an outcome is not unexpected in the context of a residential neighbourhood, and in an area where filling was not restricted by way of the planning controls.

In terms of the design of the development at 1 Kallaroo Circuit stormwater from the dwelling and secondary dwelling will be drained to the street. Further additional drainage pits are located in the rear of the property to also collect any further stormwater. It is staff opinion that surrounding properties won’t be affected by this development by stormwater runoff. See diagram 5 for details.

Diagram 1 – Exhibit 5 of MCFMP 1997

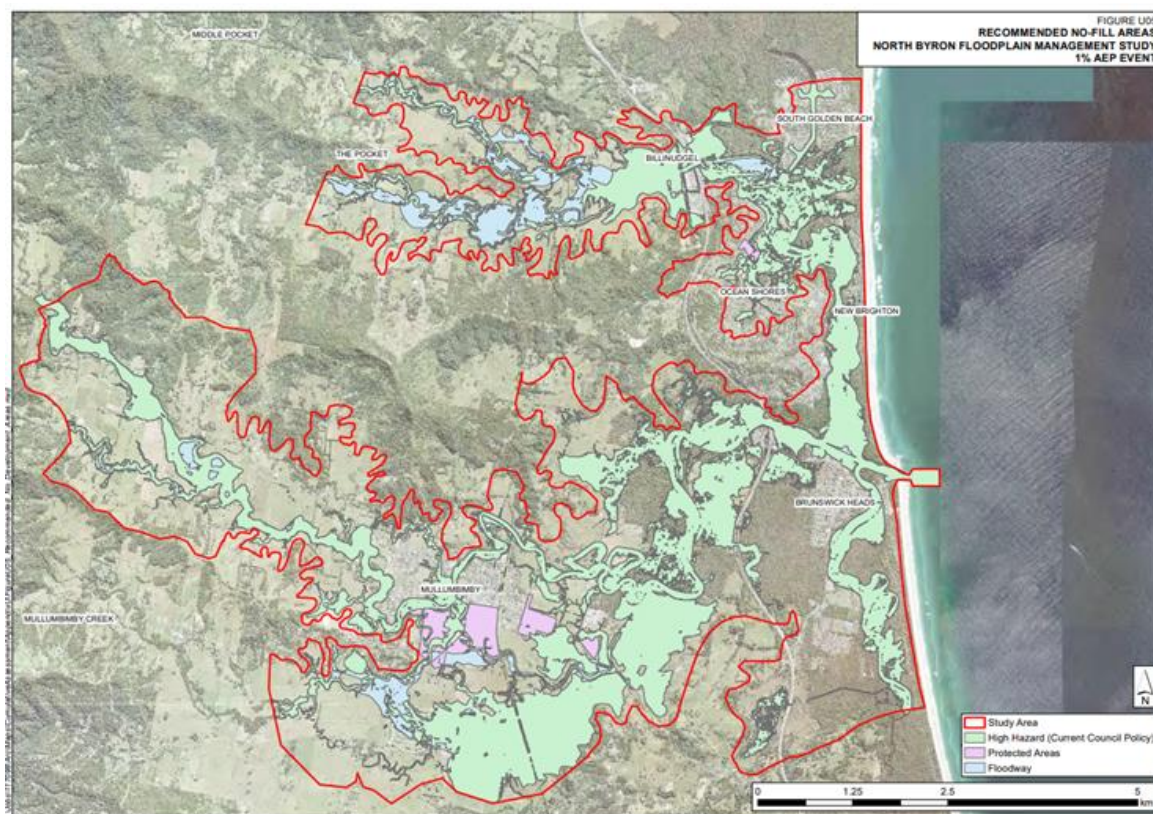


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9.4

Diagram 2 – Figure U5 of NBFRRMP 2020 – (the subject property nor surrounding properties in Kallaroo Circuit are not identified as no fill areas)

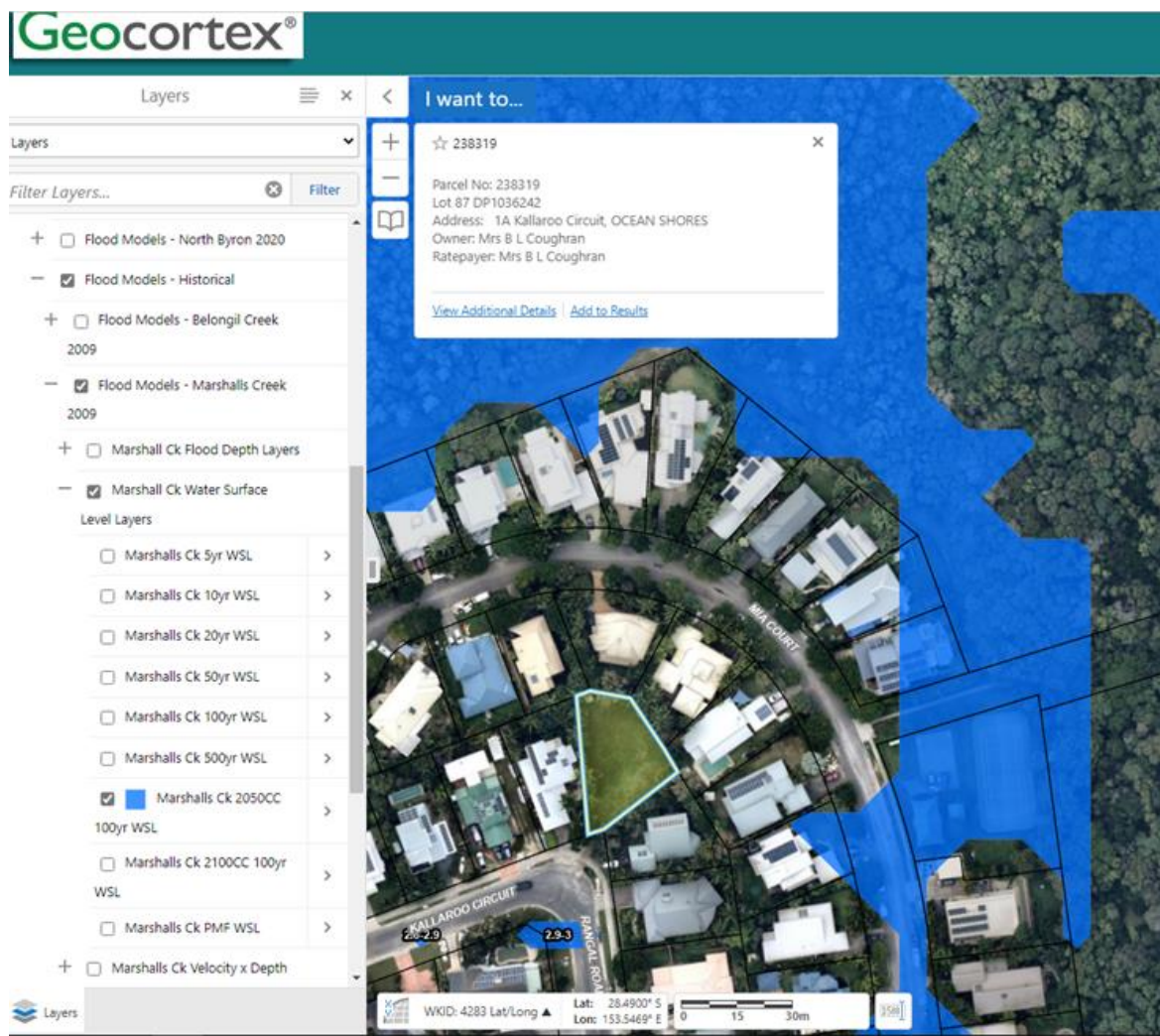


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9.4

Diagram 3 – 2050 1% AEP flood extent from 2009 Coastal Creeks Flood Study

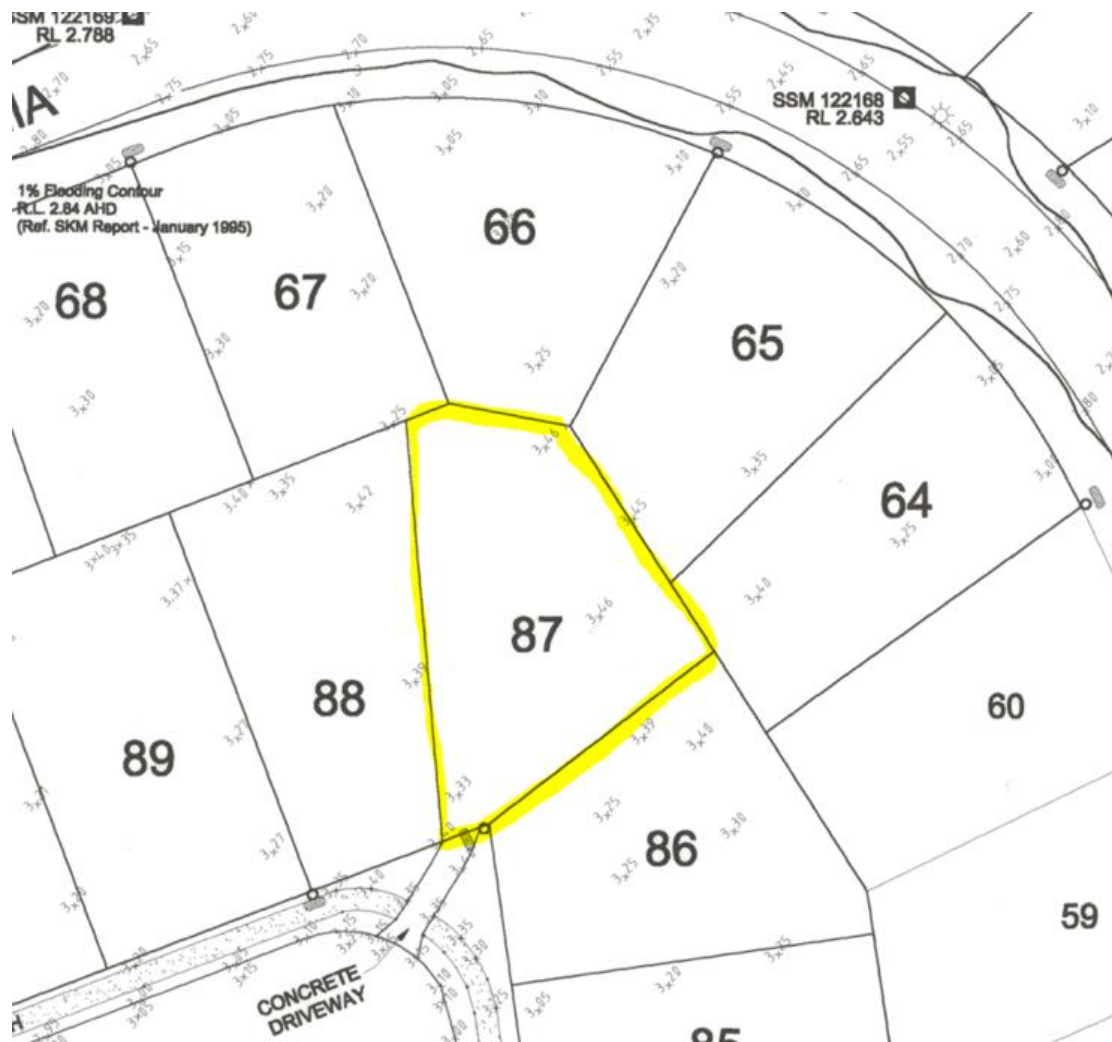


BYRON SHIRE COUNCIL

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9.4

Diagram 4 – Extract of Work As Executed Plans for “Fern Beach Estate” – filled levels at time of completion of the subdivision

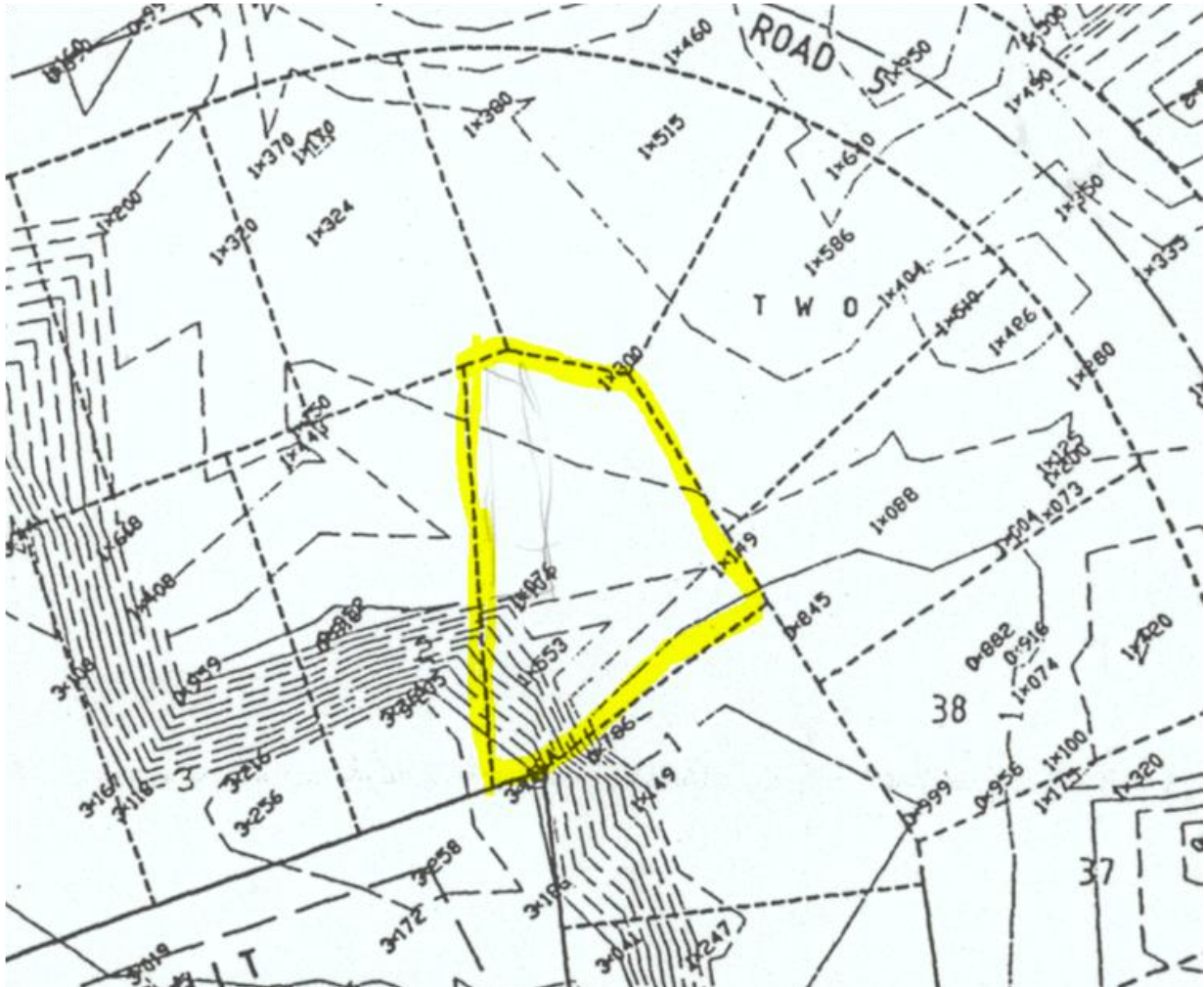


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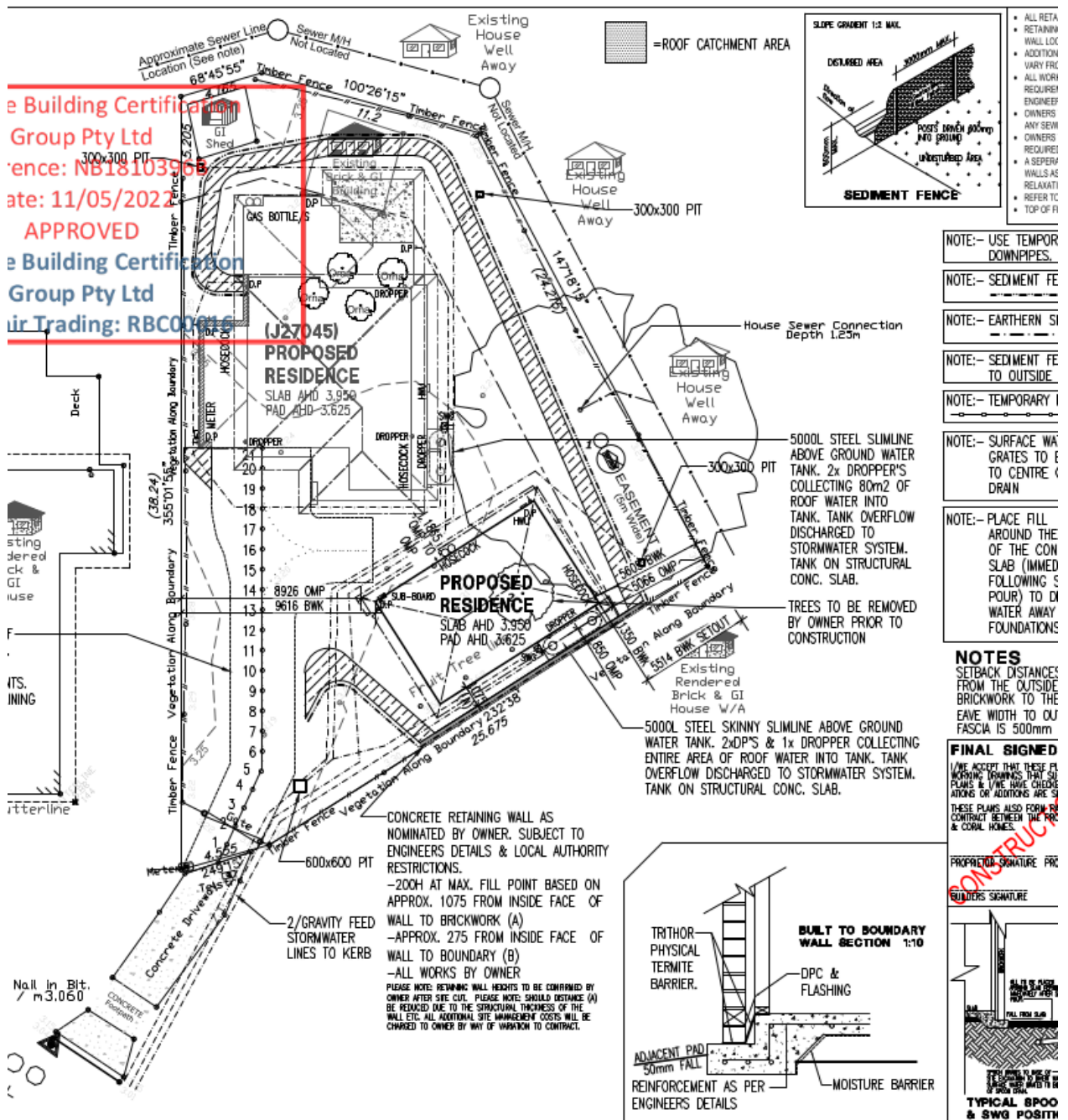
9.4

Extract of existing surface before filling



5

Diagram 5 copy of drainage plan associated with amended Construction Certificate
11.2017.749.4 issued 11 May 2022



Financial/Resource/Legal Implications:

- For any additional reports, survey work and or plans to be prepared/undertaken the result of this NOM, staff and budgetary resources would need to be allocated in the 2022-23 budget.

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NOTICES OF MOTION

9.4

Is the proposal consistent with any Delivery Program tasks?

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
Community Objective 4: We manage growth and change responsibly	4.1: Support the visions and aspirations of local communities through place-based planning and management	4.1.3: Manage development through a transparent and efficient assessment process	4.1.3.5	Respond to and investigate complaints against building standards

SUBMISSIONS AND GRANTS

Report No. 11.1 Grants May 2022

Directorate: Corporate and Community Services

5 **Report Author:** Donna Johnston, Grants Coordinator

File No: I2022/660


Summary:

10 Council has submitted applications for several grant programs which, if successful, would provide funding to enable the delivery of identified projects. This report provides an update on grant applications.

RECOMMENDATION:

15 **That Council notes the report and Attachment 1 (#E2022/51678) for Byron Shire Council's grant submissions as at 31 May 2022.**

Attachments:

20 1 Grant submissions as at 31 May 2022, E2022/51678 

Report

Currently Council has 14 grant submissions awaiting determination (refer Grants Report May 2022 (Attachment 1)).

Successful applications

5 Streets as Shared Spaces Round 2

NSW Department of Planning and Environment funding (\$410,614) to improve the walkability, amenity and public domain of the commercial centre of Byron Bay through planting, seating, road closure and the activation of the precinct with the monthly community market.

10

Active Fest Event – Cavanbah Centre

NSW Office of Sport has awarded \$30,000 for an Active Day Event to be held at the Cavanbah Centre in July 2022. The inclusive family day event will showcase community based active recreation opportunities within Byron Shire.

15

Flood Recovery Funding

Council has been notified of the following upcoming funding allocations as a result of the AGRN1012 Flood event:

20

1. NSW Crown Land Severe Weather and Flooding Clean-up Program 2022 - \$31,428.57 (inc GST)
2. NSW Department of Planning and Environment – Bangalow Showgrounds Flood Repair Works \$49,500 (inc GST)
- 25 3. NSW Department of Planning and Environment – Flood Response Planning Grant (support to recruit additional council staff or consultants to assist with DA Assessments) \$166,666 (exc GST)

Unsuccessful applications

- 30 Council was advised in May of the following unsuccessful applications under Transport for NSW Safer Roads Program. The roads are based on safety assessments. The projects can be nominated under the next upcoming round.

Funding scheme	Project name	Total project value \$	Amount requested \$	Council contribution \$
Safer Roads Program - Project 5624	Gulgan Rd Roundabout	\$2,733,641	\$2,105,641	\$628,000
Safer Roads Program - Project 5711	Midgen Flat Rd	\$1,262,261	\$967,693	\$294,568

BYRON SHIRE COUNCIL

SUBMISSIONS AND GRANTS

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Funding scheme	Project name	Total project value \$	Amount requested \$	Council contribution \$
Safer Roads Program - Project 5619	Mullum Rd & McAuleys Ln CHR intersection	\$292,883	\$292,883	\$0
Safer Roads Program - Project 5784	The Pocket Road	\$1,363,822	\$1,363,822	\$0
Safer Roads Program - Project 5856	Coorabell Road	\$748,833	\$748,833	\$0
Safer Roads Program - Project 5991	Wilsons Creek Road	\$2,735,487	\$2,735,487	\$0

NSW Safer Roads projects announced [Safer Roads Program - 2022-2023 projects \(nsw.gov.au\)](#).

Applications submitted

- 5 • NSW EPA Recreation Clean-up Program – Byron Bay Main Beach March 2021 storm event clean-up (\$17,329)

Upcoming grant opportunities

[Reconnecting Regional NSW – Community Events Program | NSW Government](#)

- 10 The Reconnecting Regional NSW – Community Events Program will promote the social and economic recovery of regional communities, by renewing social connections and providing a revenue-boost to local businesses, following the extended COVID-19 restrictions across regional NSW and impacts of border closures.

Seventy-four (74) responses to the Expression of Interest have been received. This grant is the subject of a separate report to Council.

[Crown Reserves Improvement Fund \(nsw.gov.au\)](#)

- 15 To support Crown Land Managers (CLMs) by providing funding for repairs, maintenance and improvements on Crown reserves. The funding aims to benefit the community, boost our economy and contribute to the cultural, sporting and recreational life of NSW.

Application submitted for replacing the South Beach Road Toilets (Brunswick Heads).

- 20 [Disaster Risk Reduction Fund | NSW Government](#) – Local and Regional Risk Reduction Stream

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The Disaster Risk Reduction Fund (DRRF) will finance targeted work across the state of NSW to support the prevention, mitigation and management of disaster risk.

- 5 Under two funding pathways, Pathway 1 and Pathway 2, the Local & Regional Risk Reduction stream aims to deliver direct risk reduction and risk mitigation solutions, build capabilities in disaster risk reduction, and promote collaboration between local communities, councils and other stakeholders.

Pathway 1 offers funding of \$50,000 to \$300,000, for projects run by a single entity with a focus on implementing smaller scale, place-based solutions to prevent new, reduce existing and manage residual disaster risk.

- 10 Pathway 2 offers funding of \$300,000 to \$1.5 million, for projects delivered by a consortium of organisations or partnerships with a focus on strategic initiatives that create long-term regional benefit and build risk reduction capability building efforts across communities or regions.

Only one application per pathway can be submitted.

15 Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
Community Objective 5: We have community led decision making which is open and inclusive	5.6: Manage Council's resources sustainably	5.6.12: Implement strategic grants management systems to deliver priority projects for Byron's community (SP)	5.6.12.2	Provide sound governance for grants management

Legal/Statutory/Policy Considerations

- 20 Under section 409 3(c) of the *Local Government Act 1993* Council is required to ensure that 'money that has been received from the Government or from a public authority by way of a specific purpose advance or grant, may not, except with the consent of the Government or public authority, be used otherwise than for that specific purpose'. This legislative requirement governs Council's administration of grants.

Financial Considerations

If Council is successful in obtaining the identified grants, this would bring funding sought to approximately \$53 million which would provide significant funding for Council projects.

- 5 Some of the grants require a contribution from Council (either cash or in-kind) and others do not. Council's contribution is funded. Please note that the Bioenergy Byron Facility has been submitted under two different funding programs; both are included in the total value below.

The potential funding is detailed below:

10	Requested funds from funding bodies	\$20,435,700
	Council Contribution Cash	\$22,010,714
	Council Contribution In-Kind	\$10,000
	Other contributions	\$47,140
	Funding applications submitted and awaiting notification (total value)	\$53,456,414

15 **Consultation and Engagement**

Cross-organisational consultation has occurred in relation to the submission of relevant grants, and the communication of proposed grant applications.

Report No. 11.2 Reconnection Regional Communities - Event Funding Expression of Interest

Directorate: Corporate and Community Services

Report Author: Donna Johnston, Grants Coordinator

5 **File No:** I2022/685

Summary:

10 Council has been allocated approximately \$362,050 under the Reconnecting Regional NSW - Community Events Program. In recognition of the extensive creative community within Byron Shire, an Expression of Interest (EOI) was open for three weeks to seek event ideas to submit to the NSW Government.


A Panel was formed to review the (EOIs) and this report offers Council opportunity to review and endorse the proposed events, prior to submission on 24 June, 2022.

15

RECOMMENDATION:

1. That Council endorses the following events under the Reconnecting Regional Communities Funding program:
 - 20 a) Sidestep (\$59,010).
 - b) Restore Fest and associated community events (\$75,000).
 - c) Queer Family Recovery Series (\$41,289).
 - c) Reconnecting Mullumbimby (\$35,500).
 - d) Bruns Drive-in Cinema (\$73,100).
 - e) After Disaster - Stories, Reflections, Songs (\$40,000).
- 25 2. That should an Expression of Interest event application not be approved by Regional NSW, the General Manager be authorised to endorse an alternative event.
- 30 3. That Council thanks the Expression of Interest applicants for their time in preparing applications and acknowledges their creativity and challenges faced during COVID-19 and the recent natural flooding disaster.

Attachments:

- 1 Reconnecting Regional Communities 2022-2023 Summary of proposed events, E2022/53720 
- 35 2 Reconnecting Regional Communities 2022-2023 Summary (all events), E2022/53914 
- 3 Confidential - Reconnecting Regional Communities - Events Funding EOI (full applications), E2022/49853

Report

Council has been allocated approximately \$362,050 under the Reconnecting Regional NSW - Community Events Program. The program aims to “*promote the social and economic recovery of regional communities, by renewing social connections and providing a revenue boost to local businesses, following the extended COVID-19 restrictions across regional NSW and impacts of border closures.*”

Events must:

- be open to all members of the public
- free to attend or a very small fee to cover any extra costs
- have a primary purpose of reconnecting communities and improving social cohesion of the local community
- be held before 31 March 2023.

Activities eligible for funding through the Reconnecting Regional NSW – Community Events Program include existing or new:

- community markets and bazaars
- festivals and fairs
- sporting events
- food and leisure events
- recovery events
- community classes and workshops
- agricultural field days (run by community organisations)
- regional racing carnivals (e.g. horse or greyhound racing) run by community organisations
- touring events and theatre programs
- community public holiday celebrations (e.g. Australia Day or Anzac Day).

For existing events, applicants were encouraged to use this funding to make the events larger or more accessible.

The events must be held by 31 March 2023. Funding can also be allocated to support a temporary Council Event Liaison Officer who will administer the event funding and support the event managers to ensure successful event delivery.

A full copy of the guidelines can be read at [Reconnecting Regional NSW – Community Events Program | NSW Government](#)

In recognition of the extensive creative community within Byron Shire, an Expression of Interest was run for three weeks to seek event ideas to submit to the NSW Government.

75 applications were received and assessed by a panel consisting of two internal staff members and one external member. Unfortunately, the second external panel member had to withdraw due to the volume of work generated by the high local interest. However, Regional NSW is aiming to review the panel recommended events between the writing of

this report and the Council meeting, to ensure the events aligned with the NSW guidelines and programs outcomes.

The panel was required to mark the EOI on the following four criteria:

1. Will the event reconnect community?
- 5 2. Will the event stimulate the local economy?
3. Event viability (timing, approval requirements, budget)
4. Organisation's capacity to deliver the event on time and within scope

Panel Recommendations

The Panel has recommended the endorsement of the following events:

- 10 1. Sidestep (\$59,010)

A new interactive multi-arts festival for kids and families. Presented in beautifully decorated temporary structures, bespoke venues, on the grass and under the trees, the festival will transform a public park into a magical participatory playground over two days. Location to be determined.
- 15 2. Restore Fest and associated community events (\$75,000)

Reconnecting communities with the joy of bush regeneration.
A series of community workshops leading to a large community festival and tree planting. Propagation. Restoration. Celebration. A series of 8 community workshops
20 in the towns and villages across the Shire will culminate in a large community tree-planting at a one-day festival in one of the Shire's iconic locations. The partners proposing this event are in liaison with Mullumbimby Showground as a highly desirable location for the tree-planting and festival.
The Restore Fest event has requested \$87,394 funding support. It is proposed to
25 reduce this to \$75,000 as ongoing maintenance of the site cannot covered under the funding arrangements.
3. Queer Family Recovery Series (\$41,289)

The Queer Family Recovery Series is a 6-month program of workshops and events, designed to provide support to a range of workers across the arts sector who were
30 badly affected by the pandemic, as well as considering the benefit to the tourism sector in Byron by attracting the pink dollar, and addressing a lack of LGBTQIA+ focused events in the Shire.
4. Reconnecting Mullumbimby (\$35,500)

4 events focussed on rebuilding, celebrating and sharing across the layers and tribes
35 within the community.

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SUBMISSIONS AND GRANTS

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- Creating a place to tell your story without witness or being in the public eye, a remedy to the social media the permeates our world.
 - A dinner to break bread together
 - A physical expression of place through Art
 - 5 • A community forum, to discover where and how we can all contribute.
5. Bruns Drive-in Cinema (\$73,100)
- Five consecutive Saturday nights of outdoor film events. Four of the films programmed will be broken down as follows, and themed to river and ocean stories:
 - 10 • A Disney-style classic family film with broad appeal,
 - An environmental oceans-based documentary
 - A “high camp” beach blanket style romp/comedy
 - A film selected by the audience from a list of five classic Ocean stories ranging from “20,000 Leagues Beneath the Sea” to “The Poseidon Adventure”
 - 15 • A film suited to live accompaniment.
6. After Disaster - Stories, Reflections, Songs (\$40,000)
Two local schools. 200 children. Four local songwriters and music makers. .One film. One free of charge community concert to be held at the local hall at the heart of the flood disaster recovery.
- 20 The After Disaster Event has asked for \$50,000 funding support, however only \$40,000 is available.

Additional event and feedback information on the successful EOI events can be found within Attachment 1 (E2022/53720).

- 25 A summary of all applications can be found in Attachment 2 (E2022/53538) and a copy of the full applications within Confidential Attachment 3 (E2022/49853).

The above event funding support totals \$323,877. The remaining \$38,101 will be allocated to the temporary part-time employment of a Council Event Liaison Officer to support the event managers and administration of the funding.

Next steps

- 30 Following Council endorsement and or recommendations, the event will be submitted to the NSW Government for approval. Council will then enter into a funding agreement with the NSW Government.

- 35 The successful EOI Events will also be required to provide a detailed Event Management Plan, Budget and Risk Management Plan and enter into an Event Management Contract with Council.

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
Community Objective 4: We manage growth and change responsibly	4.4: Support tourism and events that reflect our culture and lifestyle	4.4.1: Build a tourism industry that delivers local and regional benefits in line with the community's values	4.4.1.2	Continue to liaise with our business and tourism industry.

Recent Resolutions

None

5 Legal/Statutory/Policy Considerations

None

Financial Considerations

The funding program provides for support of a temporary Council Event Liaison Officer for up to three days per week until 30 March 2023.

10 Consultation and Engagement

EOI opportunity was promoted via media release, two advertisements in Echo and advertising campaign on social media.

Over 70 phone calls were received from applicants enquiring about the program.

15 Internal staff meetings conducted and EOI opportunity process presented to Councillor Strategic Planning workshop on 5 May, 2022.

DELEGATES' REPORTS

Delegate's Report No. 12.1 NSW Coastal Conference 31 May to 2 June 2022

5 **File No:** I2022/683

10 Thanks Council for sponsoring me to attend the 29th NSW Coastal Conference in Kingscliff this May & June. The event was hosted jointly by Tweed and Byron Shire Councils. It had been delayed from 2021 by CV-19.

The next event will be in Newcastle in November 2023.

15 Contributions come from all sectors of society, including many volunteers who simply care about coast. Industry and research professionals are also reasonably free with their information, which accelerates our collective understanding of coast and of how to manage it. Coastal management should be the control of our human inventions into the coastal zone, a place of great beauty and tranquillity but whose timeframe also includes storm and rain events that are deemed 'natural disasters'. Sadly, some professionals see Coastal Conferences as a weapons expo of their interventions. Gladly, there are many others who include consideration of questions like whether to intervene rather than just how to.

20 The conference book contains one-page Abstracts of each of 85 papers presented. There were poster displays of yet other papers. Authorities and suppliers had stalls at the venue. There were four tours to choose from for the Wednesday afternoon. I took the Bundjalung Cultural Tour, which included Murwillumbah Museum.

Below are my thoughts on some of the presentations I attended.

25 1. Valentin Heimhuber of WRL – *Inlet Tracker*.

This free system interrogates satellite imagery to plot the flow path of water from an ICOLL estuary to the ocean near it. It locates a start & end point for that route and finds the channel if there is one. It includes a cross section of whatever berm is controlling flow, whether there is flow or not.

30 Inlet Tracker can utilise imagery back to about 1990, yielding 30 years of historical data.

This would be a perfect tool for our ICOLLs and I hope staff who attended will use it in Byron Shire.

2. Pierre Wiat of CoreLogic – *Coastal risk impact on Australia property market*.

35 Ten percent of Australian properties are within 1km of our coast. Their values total \$1 trillion.

CoreLogic assesses risk using (a) elevation and distance from the coast; (b) coastal retreat rate as measured over 3 decades; and (c) sea level rise. It shares this

BYRON SHIRE COUNCIL

DELEGATES' REPORTS

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“composite risk” with insurance and finance industries. NSW coast is not retreating as fast as other states. **DD comment:** look at longer periods for NSW. The system doesn’t recognise where protection works have altered the retreat.

Pierre believes lending institutions will start to use this system. Insurers already do.

- 5 3. Justine Bell-James of Uni of Queensland – *Coastal wetland restoration law.*

There is a need to allow coastal wetlands to migrate, mostly due to sea level rise. There is also a large legacy of loss of wetlands (both saltmarsh and mangrove). Sadly, approvals for restoration have to follow the same application path as for development - that system is set up for development, not for environmental restoration.

Coastal squeeze = no room for landward migration. The USA uses “rolling easements” - everyone retreats. It is not the same as our word “easement”. A better name might be “Rolling Covenant”.

- 15 4. Kristian Kumbier of Uni of Wollongong – *Wetland morphology and its effect on sea level rise modelling in barrier estuaries.*

Mangrove and salt marsh wetlands occupy the intertidal zone. Changes include higher water surface and lateral migration - tidal inundation (bath tub) modelling doesn’t include these. Lake Illawarra was used as an example of an immature wetland versus Shoalhaven River mature. The sequence is mangroves pushing into salt marsh and that in turn into casuarina, along “migration corridors”.

- 20 5. Balanda Sack of Beattie Hughes & Ass. – *Land value consequences of Coastal Hazards and Adaption.*

Much coastal management is driven by the fear that Risk Assessment will suppress property value. It doesn’t. There are “perverse incentives”. In 2021 coastal land values rose 30% (land value only). Valuers now have to include consideration of climate change.

Balanda looked at Valuer General values in six locations including Belongil, where prices rose by 40%.

Floodplain designation has a clear impact on pricing - primarily driven by insurers. Sea level rise doesn’t yet have the same recognition, partly because people expect government protection.

- 30 6. Chris Baiada of DoPE – *Nutrient & organic matter removal efficiency of stormwater control measures.*

Urban runoff is a source of organic pollutants. Source control measures (SCMs) are effective during storms but can add pollutants in drier (baseflow) periods.

Southern Cross Uni has excellent autosamplers with capacity for 54 samples.

7. Kate Waddington of Uni of NSW – *Prioritising catchment areas for the remediation of wetlands in coastal estuaries.*

Flood gates empty a canal when outside (tidal) water is lower than in the canal. The period on the sine curve of the tide is called the Tidal Window. Its duration is affected by hydrodynamic changes in an estuary like the Clarence. As low tides rise due to SLR, the window will shorten.

Bank protection works in the lower estuary are likely to raise the tidal prism upstream, and reduce drainage from canals. A benefit of giving up previously farmable land and reintroducing wetlands lower in the estuary is that farm land further upstream may remain farmable for longer.

8. Nat Patterson of Royal Haskoning DHV – *Adaptive risk management of erosion, Stockton Beach.*

This project at Barrie Crescent, Stockton used Geo bags of rocks rather than of sand. Rock Bags are easier to install, are reusable and have better cohesion than Geo bags. They used “Kyowa” brand four tonne bags of rounded river rock.

9. James Carley of WRL – *Recent Coastal Change and emergency management in Byron Bay.*

Co-authors included locals Catherine Knight and Bill Payne (geotechnical analysis). Thompsons Rock is a hard point on the crescent beach. Their work was based on a Hazard Study of 2013 and that used 2007 as its base case, to predict up till 2050. One third of that period has already passed.

James’ 2021 hazard line went through the café. In December 2020 there was a 1 in 2 year event. Those sandbags should cope with about 1 in 2 to 1 in 5 year events. Clarkes Beach is receding at about 20 cm/year. Long term recession is best measured at a higher contour as this fluctuates less.

10. David Workman of DoPE – *Risk Assessments for Coastal Water Sharing Plans.*

Focus on minimising risk, not mitigating it. Many water data sources are discontinued or obsolete. High Ecological Value Aquatic Ecosystems = HEVAE.

11. Emma Maratea of DoPE – *Opening that ICOLL: are we managing flood risk?*

Over half of New South Wales’ ICOLLs have an Opening Strategy. Two reasons given for opening are (i) to alleviate long period inundation of low lying properties, and (ii) to reduce peaks of anticipated major floods. Emma shows that the second reason is mostly myth, often suggested via a floodplain management plan. They researched and analysed several ICOLLs including Narrabeen Lake where a small benefit of 200 mm reduced flooding in many houses.

They categorised three types of ICOLLs relating to berm shape. They distinguished using a ratio of catchment area to estuary area. Shadracks Creek had a small estuary and showed no benefit of pre-emptive opening. Merimbula catchment is dominated by its estuary and showed benefits of 200mm for 1 in 100 year and 300mm for 1 in 10 year testing.

BYRON SHIRE COUNCIL

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DD comment: our Belongil has a catchment area of about 30 km² and an estuary area of 0.3 km² with a volume of 88 ML.

Signed: Cr Duncan Dey

STAFF REPORTS - GENERAL MANAGER

**Report No. 13.1 Draft Councillor and Staff Interaction Policy
for Public Exhibition**

5 **Directorate:** General Manager

Report Author: Ralph James, Legal Counsel

File No: I2022/389


Summary:

10 The purpose of this report is to seek Council endorsement to place the Draft Councillor
and Staff Interaction Policy on Public Exhibition for a period of 28 days.

RECOMMENDATION:

- 15 1. **That Council endorses the Draft Councillor and Staff Interaction Policy being
placed on public exhibition for a minimum period of 28 days.**
2. **That in the event:**
- a) **that any submissions are received on the draft Policy, those submissions
be reported back to Council, prior to the adoption of the Policy**
- 20 b) **that no submissions are received on the draft Policy, the Policy be
adopted.**

Attachments:

- 25 1 Draft Councillor and staff interaction Policy, E2022/35578 

Report

On 28 May 2021 the Office of Local Government (OLG) commenced the public exhibition of a draft Model Councillor and Staff Interaction Policy (draft Model Policy). The draft Model Policy had been developed based on best practice policies within the NSW local government.

The Policy is divided into 9 Parts, and essentially sets out the 'dos' and 'don'ts' of council and staff interaction. Importantly, the policy reinforces the statutory role of a councillor as being to set the strategic direction for the council, and the role of the staff being to advise the governing body, implement Council's decisions and to oversee service delivery under the leadership of the general manager.

Positive and professional working relationships between councillors and staff are crucial in the effective functioning of any Council.

Key to this is councillors and staff having and fostering a mutual understanding and respect for each other's the different roles and responsibilities, as clearly defined by Local Government Act 1993 (the Act). As members of the governing body councillors are responsible for setting the strategic direction of the council and keeping its performance under review, as well as representing the community, as outlined in Section 232 of the Act:

1. The role of a councillor is as follows:

- a) to be an active and contributing member of the governing body,
- b) to make considered and well informed decisions as a member of the governing body,
- c) to participate in the development of the integrated planning and reporting framework,
- d) to represent the collective interests of residents, ratepayers and the local community,
- e) to facilitate communication between the local community and the governing body,
- f) to uphold and represent accurately the policies and decisions of the governing body,
- g) to make all reasonable efforts to acquire and maintain the skills necessary to perform the role of a councillor.

2. A councillor is accountable to the local community for the performance of the council.

The role of the General Manager, and staff through delegation is to carry out the day to-day operations of the council and to implement the decisions, plans, programs and policies adopted by the governing body, as outlined in section 335 of the Act:

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The general manager of a council has the following functions:

- a) to conduct the day-to-day management of the council in accordance with the strategic plans, programs, strategies and policies of the council,
- b) to implement, without undue delay, lawful decisions of the council,
- 5 c) to advise the mayor and the governing body on the development and implementation of the strategic plans, programs, strategies and policies of the council,
- d) to advise the mayor and the governing body on the appropriate form of
10 community consultation on the strategic plans, programs, strategies and policies of the council and other matters related to the council,
- e) to prepare, in consultation with the mayor and the governing body, the council's community strategic plan, community engagement strategy, resourcing strategy, delivery program, operational plan and annual report,
- 15 f) to ensure that the mayor and other councillors are given timely information and advice and the administrative and professional support necessary to effectively discharge their functions,
- g) to exercise any of the functions of the council that are delegated by the council to the general manager,
- 20 h) to appoint staff in accordance with the organisation structure determined under this Chapter and the resources approved by the council,
- i) to direct and dismiss staff,
- j) to implement the council's workforce management strategy,
- k) any other functions that are conferred or imposed on the general manager by or under this or any other Act.

- 25 To undertake their roles and responsibilities councillors need access to information about the council's strategic position and performance to perform their civic functions effectively.

30 The general manager and staff are responsible for providing councillors with this information to facilitate the decision-making process. Given councillors' role in setting the council's strategic direction and keeping its performance under review, councillors are entitled to request information about a range of issues.

The draft Policy aims to establish a framework by which councillors can access the information they need to perform their civic functions and promote positive and respectful interactions between councillors and staff.

LGNSW, in commenting on the draft Policy said that:

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- “the greatest value provided by the policy is through the creation of a Schedule of authorised staff contacts for councillors. LGNSW believes that such a Schedule, if adopted and utilised correctly, would help to create a framework by which to govern the often-necessary interactions between councillors and staff and enable each to fulfil their respective obligations under the Local Government Act 1993 (LG Act). LGNSW believes that the Schedule would not only assist in promoting appropriate interactions between Councillors and staff but that it would also assist in preventing inadvertent or accidental inappropriate interactions, including the perception of inappropriate interactions. This would have a protective element for both Councillors and staff. LGNSW is of the view that the MCSI policy, when viewed and utilised in conjunction with the LG Act and the Model Code of Conduct, provides some practical examples and guidance for what constitutes appropriate and necessary interactions between Councillors and staff. These examples would likely assist in the review and management of Code of Conduct complaints and in establishing whether a complaint requires action or not.”
- 15 While not mandatory, the Model Councillor and Staff Interaction Policy reflects best practice and all councils, are encouraged by OLG to adopt it.

Dealing with complaints under the policy

- 20 The Policy makes the general manager the person to whom complaints about councillors and staff should be made, and the mayor the person to whom complaints about the general manager should be made. This is the same as for lodging a complaint that the Code of Conduct has been breached.

The general manager will need to determine if a complaint under the Policy should be treated as a complaint under the Code of Conduct.

- 25 Unlike the Code of Conduct, the Policy does not impose a time limit on making a complaint. Nor does a complaint need to be in writing. This may have the advantage of allowing a complaint under the Policy to be dealt with less formally.

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
Community Objective 5: We have community led decision making which is open and inclusive	5.2: Create a culture of trust with the community by being open, genuine and transparent	5.2.3: Provide access to publicly available corporate registers	5.2.3.2	Review, update and publish Council policies online and report on the status of Council's policy register

Recent Resolutions

Nil.

Legal/Statutory/Policy Considerations

- 5 The draft Policy incorporates aspects of Council's Code of Conduct for Councillors and the Councillor Service Level Agreement.

Financial Considerations

Nil.

Consultation and Engagement

- 10 The draft Policy was briefed to Councillors at a Strategic Planning Workshop on 2 June 2022.

Report No. 13.2 Adoption of a Code of Meeting Practice

Directorate: General Manager

Report Author: Ralph James, Legal Counsel

File No: I2022/695

5 **Summary:**


This report deals with the public submissions received following the exhibition of Council's draft Code of Meeting Practice and amendments proposed by Cr Dey and recommends the adoption of the Code of Meeting Practice.

10

RECOMMENDATION:

1. That Council changes the name of the “Strategic Planning Workshop” to “Councillor Workshop” and amend the Code of Meeting Practice accordingly.
- 15 2. That Council, after consideration of the matters raised in submissions, adopts the Code of Meeting Practice (E2022/12245).

Attachments:

- 20 1 Confidential - Submissions on the draft Code of Meeting Practice, E2022/43253
- 2 Code of Meeting Practice, E2022/12245 

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Report

The Model Code of Meeting Practice for Local Councils in NSW is made under section 360 of the *Local Government Act 1993* and clause 232 of the *Local Government (General) Regulation 2021*.

- 5 Council must adopt a code of meeting practice that incorporates the mandatory provisions of the Model Meeting Code within 12 months of the local government election. Council's adopted meeting code must not contain provisions that are inconsistent with the mandatory provisions. Council's adopted meeting code may also incorporate the non-mandatory provisions of the Model Meeting Code and any other supplementary provisions adopted by the council.
- 10

- Under section 361 of the *Local Government Act 1993*, before adopting a new code of meeting practice, councils must first exhibit a draft of the code of meeting practice for at least 28 days and provide members of the community at least 42 days in which to comment on the draft Code.
- 15

The draft Code was exhibited from 27 March 2022 to 8 May 2022 inclusive.

Four submissions were received. The full submissions are contained in Confidential attachment 1 and are summarised below.

Attending meetings by audio-visual link	Comment
The Mayor's decision that Councillors could not attend the 28 April 2022 meeting by Zoom requires review. Although in-person attendance is desirable the option for a Councillor to attend by virtual means should be available under any reasonable circumstance to ensure as many Councillors attend meetings as possible.	The draft Code of Meeting Practice makes provision for Councillors to attend meetings by audio-visual link. See CI 5.18 to 5.29. This is consistent with the Model Code of Meeting Practice. Councillors may attend and participate in meetings by audio-visual link with the approval of Council. A Councillor may request to attend one or more meetings by audio-visual link. A decision whether to approve a request by a Councillor to attend a meeting of Council by audio-visual link must be made by resolution of Council. Council's resolution must state reasons.
Change requirements around seconding "for the debate"	
At the moment, motions need to be seconded before debate commences. 10.1 Unless otherwise specified in this code, a motion or an amendment cannot be debated unless or until it has been seconded. Add on additional clause:	This suggestion is not without merit. It would enable Councillors to gain an appreciation of what is proposed in the motion or amendment before seconding and before debate commences. It may mean that a Councillor who was inclined to second so that they could hear what the motion was about may decline

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<p>The mover is permitted their three-minute speech to introduce the motion without a seconder, after which a seconder is required to commence the debate.</p>	<p>to do so after the explanation had been given. In that instance all that would be lost would be the 3 minutes of the mover's speech, whereas significant time may be saved if the motion or amendment fell away for lack of a second after it had been made clear what the motion or amendment was about. The suggestion, if adopted, would slightly expand clause 10.11 of the Draft Code of Meeting Practice which provides that the mover of an amendment is to be given the opportunity to explain any uncertainties in the proposed amendment before a seconder is called for.</p>
<p>Strategic Planning Workshop</p>	
<p>The Strategic Planning Workshop is not to be used as a source of so-called consensus on any issue.</p>	<p>The draft Code of Meeting Practice provides that the Strategic Planning Workshop is designed to brief Councillors on business to be considered at a forthcoming ordinary or planning meeting. Councillors must not use Strategic Planning Workshops to make preliminary decisions on items of business they are being briefed on. Decision-making must be left to the formal Council meeting at which the item of business is to be considered. Apart from the title, the words in the draft Code of Meeting Practice mirror those in the Model Code of Meeting Practice.</p>
<p>The SPW is to be restricted to strategic planning issues only.</p>	<p>The Strategic Planning Workshop is designed to brief Councillors on business to be considered at a forthcoming ordinary or planning meeting. To limit the scope of the Workshop to strategic planning issues would defeat the pre-meeting briefing purpose of the Workshop.</p>
<p>Council must decline to debate staff recommendations issuing from the SPW.</p>	<p>Staff recommendations do not issue from a Strategic Planning Workshop. The Workshop may discuss a staff recommendation which already exists in an agenda item. The Workshop may inform a future staff recommendation.</p>
<p>Staff present at Strategic Planning Workshops for the stated purpose of "briefing" Councillors must not offer opinions or recommendations unless</p>	<p>Briefing session means an informal meeting or gathering between Councillors and staff to discuss the business of the Council or any matter on, or proposed to be on, the agenda</p>

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specifically asked by a Councillor.	<p>of a Council meeting.</p> <p>Staff provide information to Councillors. Often that is by way of opinion based on staff expertise on the topic.</p> <p>It is then a matter for informed Councillors to accept or reject any opinion which may have been presented to them.</p> <p>Given the confusion which the name "Strategic Planning Workshop" creates it may be worth considering changing the name of the Workshop to what it really is i.e., a Councillor Workshop</p>
Changes to the Code of Meeting Practice	
Decisions as to whether a particular proposed change to the Code of Meeting Practice should be publicly exhibited or not, should be made by the elected Council.	Decisions as to amendments to the Code of Meeting Practice are made by Council resolution and are exhibited after a resolution to that effect.
Topic of questions and submissions in Public Access	
Allow questions and submissions from members of the public that pertain to general Council business, whether on the current agenda or not.	<p><u>Questions</u></p> <p>The purpose of a public access session is to provide an opportunity for members of the public to participate directly in the democratic process through the making of representations to Council about matters on the agenda and thereby influence Council's decision making.</p> <p>Because Council treats the Public Access session as part of the Council meeting it is therefore governed by other relevant provisions of the Code of Meeting Practice. The Model Code of Meeting Practice provides that a question must not be asked at a meeting of the council unless it concerns a matter on the agenda of the meeting or by way of a Councillor question on notice.</p> <p>There is an array of avenues for the community to bring non-agenda matters to Councillor's attention short of it being posed as a question or a submission at a meeting.</p> <p><u>Submissions</u></p> <p>The draft Code of Meeting Practice provides that submissions must be on current issues before Council and not on agenda items. A submission on an agenda item is catered for by the availability of a speech for or</p>

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	against the recommendation in the agenda item.
Whether or not a particular public question is to be 'allowed' or 'disallowed' is to be decided on the day by a vote of Council, not secretly by the Mayor or by staff prior to the meeting.	The draft Code of Meeting Practice provides that it is the General Manager who is to receive requests for Public Access and to approve such requests. The Model Code of Meeting Practice provides that the General Manager may refuse an application to speak at a public forum. The general manager must give reasons in writing for a decision to refuse an application. The draft Code of Meeting Practice provides the chairperson with power to deal with disorderly conduct by a speaker. It also provides the General Manager with power to refuse further applications from such speaker.
A corporate entity that is a ratepayer or is the owner/operator of a business within the Shire, is permitted to protect its interests or the public interest by asking questions in the same way as a member of the public, a corporation being legally a person.	The draft Code of Meeting Practice does not preclude this. The draft Code contemplates that a person could ask a question on behalf of a corporation provided that the question complies with other aspects of the draft Code. That question would count toward the number of times a speaker addresses Council.
In the event that the answer or response to a legitimate question put to Council does not, by evasion or other device, produce the information sought, Council, will upon complaint, vote as to whether the questioner is entitled to ask the same question, (or variant thereof), again at the next meeting in addition to the normally permitted question for that meeting.	A mandatory provision of the Model Code of Meeting Practice (9.19) provides that the chairperson must not permit discussion on any reply to, or refusal to reply to, a question put to a councillor or Council employee
Wilful failure by a staff member or councillor to answer a legitimate question, by the use of evasion, misdirection, irrelevance, misrepresentation or similar technique is considered an act of disrespect and a breach of the Code of Conduct.	If a response to a question cannot be the subject of discussion on any reply to, or refusal to reply to, a question put to a councillor or Council employee, it could not become subject to Code of Conduct provisions.
Acts of Disorder	
In the event of an alleged 'act of disorder' by anyone present, the accused is to be given the opportunity to defend or explain himself/herself prior to any vote for expulsion, for any demand for an apology or for any other sanction.	The draft Code of Meeting Practice empowers the meeting or the chairperson, if they are delegated to do so, to expel any person, other than a Councillor, from a Council meeting for an act of disorder. To enable the meeting or the chairperson to be satisfied that there was an act of disorder

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	<p>and to afford procedural fairness it would be appropriate to allow the person concerned to show cause why disciplinary action should not be taken.</p> <p>Any speech by the person concerned should be limited to 3 minutes.</p>
Notices of Motion	
Staff will not participate in debate by offering comments upon or analyses of Notices of Motion unless specifically requested by the mover.	<p>The Model Code of Meeting Practice makes provision (albeit non-mandatory) for the General Manager to prepare a report in relation to the Notice of Motion for inclusion with the business papers if the Notice of Motion has legal, strategic, financial or policy implications which should be taken into consideration by the meeting.</p> <p>Staff comments are intended to provide information to Councillors when they consider a Notice of Motion. Staff do not include formatted recommendations in Notice of Motion comments.</p>
Councillor Questions	
Councillor Questions with Notice to be moved to the beginning of the meeting, immediately after public access.	<p>The Order of Business set out in the draft Code of Meeting Practice is consistent with Council's approach over a number of years. The Order of Business is also generally consistent with that set out in the Model Code of Meeting Practice.</p> <p>The Model Code of Meeting Practice provides that in a Council meeting the chairperson must not permit discussion on any reply to, or refusal to reply to, a question put to a councillor or Council employee.</p>
Councillor Questions without Notice to be permitted immediately after Councillor Questions with Notice.	<p>Councillor questions without notice generally arise during the debate on agenda items. Questions asked at a Council meeting must relate to a matter on the agenda of the meeting unless the question is asked by way of Question on Notice.</p>
A person is permitted to speak on up to 3 occasions including the asking of a question.	<p>This is a matter for Councillors to determine.</p>
A Councillor who attempts to enter into a discussion with speaker instead of asking a question will be reprimanded by the Mayor.	<p>The Model Code of Meeting Practice provides that <i>"a councillor (including the chairperson) may, through the chairperson, ask questions of a speaker following their address at a public forum. Questions put to a speaker must be direct, succinct and without argument."</i></p>

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	It follows that it is open to the chairperson to disallow a Councillor question if it does not comply with the above requirement. Council could consider imposing the time limit (perhaps 1 minute) on a councillor question.
Submissions in Public Access	
The Chairpersons decision to accept or reject a submission is subject to a Motion of Dissent.	The draft Code of Meeting Practice provides that it is the General Manager who is to receive requests for Public Access and to approve such requests. The Model Code of Meeting Practice provides that the General Manager may refuse an application to speak at a public forum. The general manager must give reasons in writing for a decision to refuse an application. The draft Code of Meeting Practice provides the chairperson with power to deal with disorderly conduct by a speaker.
A submission as to confidentiality will not count towards the maximum permitted speakings (sic) per person.	This is a matter for Councillors to determine Councillors may give greater weight to this submission if the provisions of the Model Code of Meeting Practice are adhered to by speakers. They provide, in respect of a speech as to confidentiality, that <i>"speakers must confine their representations to whether the meeting should be closed to the public. If the speaker digresses to irrelevant matters, the chairperson is to direct the speaker not to do so. If the speaker fails to observe a direction from the chairperson, the speaker will not be further heard"</i> .
Proposed Clause 4.11 fails to clearly distinguish between a general submission and a speech for or against a particular motion.	The provisions of clause 4.2 of the draft Code of Meeting Practice make the distinction clear.

At Councils' Ordinary (Planning) Meeting on 9 June 2022 a number of amendments were proposed by Cr Dey. To enable the amendments to be fully considered Council resolved to defer the report to Council's 23 June 2022 Ordinary meeting.

5

Cr Dey's proposed amendments are:

- a) **In clause 3.3 amend the wording so that it matches that in s366 of the Local Government Act.**

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Current Clause

If the mayor receives a request in writing, signed by at least two councillors, the mayor must call an extraordinary meeting of the council to be held as soon as practicable, but in any event, no more than fourteen calendar days after receipt of the request.

- 5 The mayor can be one of the two councillors requesting the meeting.

Clause if amended

If the mayor receives a request in writing signed by at least two councillors, the mayor must call an extraordinary meeting of the council to be held as soon as practicable but in any event within fourteen days after receipt of the request.

- 10 The mayor can be one of the two councillors requesting the meeting.

- b) Add to the end of Clause 3.19, “The Mayor is encouraged to give Councillors and staff as much notice as possible of the intent and content of the Minute”;**

Current Clause

- 15 Nothing in clause 3.18 limits the powers of the mayor to put a mayoral minute to meeting under clause 9.6.

Clause if amended

Nothing in clause 3.18 limits the powers of the mayor to put a mayoral minute to meeting under clause 9.6. In doing so the mayor is encouraged to give councillors and staff as much notice as possible of the intent and content of the minute.

- 20 **c) In clause 4.7, change from two to three occasions;**

Current Clause

A person is permitted to speak on no more than two occasions per meeting whether that be a speech or speeches for or against items on the agenda or to make a submission or to ask a question.

- 25 Clause if amended

A person is permitted to speak on no more than three occasions per meeting whether that be a speech or speeches for or against items on the agenda or to make a submission or to ask a question.

- 30 **d) In clause 4.9, change the first sentence to “Up to three speeches in favour of and three speeches against an item on the agenda will be permitted”;**

Current Clause

- 35 Only two speeches in total in favour of and two speeches in total against an item on the agenda will be permitted. If more than the permitted number of speakers apply to make representations, the general manager or their delegate may request the speakers to nominate from among themselves the persons who are to make representations to the

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council. If the speakers are not able to agree on whom to nominate to make representations, the Chairperson or their delegate is to determine who will make representations to the council.

Clause if amended

- 5 Up to three speeches in total in favour of and two speeches in total against an item on the agenda will be permitted. If more than the permitted number of speakers apply to make representations, the general manager or their delegate may request the speakers to nominate from among themselves the persons who are to make representations to the council. If the speakers are not able to agree on whom to nominate to make
- 10 representations, the Chairperson or their delegate is to determine who will make representations to the council.
- 15 e) **change clause 4.10 to read “At the conclusion of each set of speeches on an item on the Agenda, the Mayor will invite Councillors to ask questions of clarity. A speaker’s response to a Councillor’s question is limited to one minute. A Councillor’s question is limited to 30 seconds. Each Councillor is limited to two questions. Councillors must put their questions directly, succinctly, respectfully and without argument”;**

Current Clause

- 20 The Mayor will invite Councillors to ask questions of speakers at the conclusion of their speech in favour of or against an item on the Agenda. A speaker’s response to a Councillor’s question is limited to one minute.

Clause if amended

- 25 At the conclusion of each set of speeches on an item on the Agenda, the Mayor will invite Councillors to ask questions for clarity. A Councillor’s question is limited to 30 seconds. Each Councillor is limited to two questions. Councillors must put their questions directly, succinctly, respectfully and without argument. A speaker’s response to a Councillor’s question is limited to one minute.
- 30 f) **amend Clauses 4.19 and 4.20 so that a seconder is required, and an amended extension time maybe suggested. Clauses 4.21 to 4.23 may thus also need adjustment.**

Current Clause

- A motion to extend the Public Access part of the meeting is a Procedural Motion. It must be proposed and need not be seconded.

Clause if amended

A motion to extend the Public Access part of the meeting is a Procedural Motion. It must be proposed and seconded.

Note: If clause 4.20 is amended Clause 4.22 which presently reads "No debate or amendments shall be permitted on the Procedural Motion" will need to be amended to "No

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debate shall be permitted on the Procedural Motion or any amendment to it. Amendments are limited to the length of the extension only”

g) In Clause 5.2, add at the end a note of the from (go to Clause 5.18);

Current Clause

- 5 A councillor cannot participate in a meeting of the council or of a committee of the council unless personally present at the meeting, unless permitted to attend the meeting by audio-visual link under this code.

Clause if amended

- 10 A councillor cannot participate in a meeting of the council or of a committee of the council unless personally present at the meeting, unless permitted to attend the meeting by audio-visual link under this code (see clauses 5.18 to 5.29).

h) In Clauses 5.13 and 5.15 replace “and, as far as is practicable, with each councillor” with “and by email with each councillor”;

Current Clause

- 15 Where, prior to the commencement of a meeting, it becomes apparent that a quorum may not be present at the meeting, or that the safety and welfare of councillors, council staff and members of the public may be put at risk by attending the meeting because of a natural disaster (such as, but not limited to flood or bushfire), the mayor may, in consultation with the general manager and, as far as is practicable, with each councillor, cancel the meeting. Where a meeting is cancelled, notice of the cancellation must be published on the council’s website and in such other manner that the council is satisfied is likely to bring notice of the cancellation to the attention of as many people as possible.

Clause if amended

- 25 Where, prior to the commencement of a meeting, it becomes apparent that a quorum may not be present at the meeting, or that the safety and welfare of councillors, council staff and members of the public may be put at risk by attending the meeting because of a natural disaster (such as, but not limited to flood or bushfire), the mayor may, in consultation with the general manager, and by email with each councillor, cancel the meeting. Where a meeting is cancelled, notice of the cancellation must be published on the council’s website and in such other manner that the council is satisfied is likely to bring notice of the cancellation to the attention of as many people as possible.

Current Clause

- 35 A meeting of the council or a committee of the council may be held by audio-visual link where the mayor determines that the meeting should be held by audio-visual link because of a natural disaster or a public health emergency. The mayor may only make a determination under this clause where they are satisfied that attendance at the meeting may put the health and safety of councillors and staff at risk. The mayor must make a
- 40

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determination under this clause in consultation with the general manager and, as far as is practicable, with each councillor.

Clause if amended

5 A meeting of the council or a committee of the council may be held by audio-visual link where the mayor determines that the meeting should be held by audio-visual link because of a natural disaster or a public health emergency. The mayor may only make a determination under this clause where they are satisfied that attendance at the meeting may put the health and safety of councillors and staff at risk. The mayor must make a determination under this clause in consultation with the general manager, and by email
10 with each councillor

i) **In Clause 5.23, add a new clause saying “Councillors and staff are encouraged to stay away if they have any symptoms of a communicable illness”;**

Current Clause

15 A decision whether to approve a request by a councillor to attend a meeting of the council or a committee of the council by audio-visual link must be made by a resolution of the council or the committee concerned. The resolution must state:

- a) the meetings the resolution applies to, and
- b) the reason why the councillor is being permitted to attend the meetings by audio-visual link where it is on grounds other than illness, disability, or caring
20 responsibilities.

Clause if amended

A decision whether to approve a request by a councillor to attend a meeting of the council or a committee of the council by audio-visual link must be made by a resolution of the council or the committee concerned. The resolution must state:

- 25 a) the meetings the resolution applies to, and
- b) the reason why the councillor is being permitted to attend the meetings by audio-visual link where it is on grounds other than illness, disability, or caring responsibilities.

30 Note: Councillors and staff are encouraged not to be personally present at a meeting if they have any symptoms of a communicable illness.

j) **In Clause 5.24, add at the end “and the reason for exclusion is to be minuted”;**

Current Clause

If the council or committee refuses a councillor's request to attend a meeting by audio-visual link, their link to the meeting is to be terminated.

35 Amendment

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Note: If Council is minded to make an amendment as proposed it is best achieved by amending clause 5.23 (b) which presently reads

5 "The resolution must state: (b) the reason why the councillor is being permitted to attend the meetings by audio-visual link where it is on the grounds other than illness, disability or caring responsibilities"

so that it reads

"The resolution must state: (b) the reason why the councillor is or is not being permitted to attend the meetings by audio-visual link where it is on the grounds other than illness, disability or caring responsibilities"

- 10 **k) In Clause 10.1, add at the end “with the exception that the mover of a Notice of Motion may speak by way of introduction before a seconder is sought”;**

Current Clause

Unless otherwise specified in this code, a motion or an amendment cannot be debated unless or until it has been seconded with the exception

15 Clause if amended

- a) Unless otherwise specified in this code, a motion or an amendment cannot be debated unless or until it has been seconded.
- b) Despite clause 10.1 (a), if no seconder is immediately forthcoming, the chairperson may permit a councillor who is the mover of a Notice of Motion to speak by way of introduction before a seconder is sought. An introductory speech is limited to two minutes with no extensions of time permitted.
- 20

- l) In Clause 10.3, add “If a Councillor withdraws their Notice of Motion, any other Councillor may pick it up”;**

Current Clause

- 25 If a councillor who has submitted a notice of motion under clause 3.10 wishes to withdraw it after the agenda and business paper for the meeting at which it is to be considered have been sent to councillors, the councillor may request the withdrawal of the motion when it is before the council

Clause if amended

- 30 If a councillor who has submitted a notice of motion under clause 3.10 wishes to withdraw it after the agenda and business paper for the meeting at which it is to be considered have been sent to councillors, the councillor may request the withdrawal of the motion when it is before the council. If a Notice of Motion is withdrawn in accordance with this clause any other councillor may, with the leave of the chairperson, move the motion at the meeting.

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
Community Objective 5: We have community led decision making which is open and inclusive	5.2: Create a culture of trust with the community by being open, genuine and transparent	5.2.4: Support Councillors to carry out their civic duties	5.2.4.3	Deliver Council meeting secretariat – including agenda preparation, minutes and council resolutions monitoring

Recent Resolutions

Current Code of Meeting Practice adopted following exhibition per resolution **20-610**

- 5 **22-016** Council deferred consideration of the Code of Meeting Practice.

Legal/Statutory/Policy Considerations

As set out in the body of the Report.

Financial Considerations

Nil.

10 Consultation

Consultation between Legal Counsel and the Corporate Planning and Improvement, and Governance Coordinators developed the Draft Code of Meeting Practice after having considered the 2021 Model Code of Meeting Practice.

- 15 The Director Corporate and Community Services and the Manager Corporate Services were consulted as the Draft Code was developed.

The Executive Team was briefed on the current version of the Draft Code on 1 December 2021.

The Draft Code was reported to Council on 3 February 2022.

- 20 The Draft Code was discussed at a Strategic Planning Workshop on 10 February 2022 and was again reported to Council on 24 March 2022.

The Draft Code was exhibited from 27 March 2022 to 8 May 2022 inclusive.

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 13.3 North Byron drainage and sewerage status

Directorate: Corporate and Community Services

5 **Report Author:** James Flockton, Infrastructure Planning Coordinator
Cameron Clark, Manager Utilities

File No: I2022/637

Summary:

This report responds to the following Council resolution:

10 At Council's 27 May 2022 meeting, Council resolved **22-214**:

Resolved:

1. *That Council receives a report at the June meeting on the following*
 - a. *The historical (5 year) proportion of infrastructure spending that has been spent in the North Byron Shire area.*
 - 15 b. *A timeline for the comprehensive assessment of the status of drains and sewerage infrastructure in North Byron Shire*
 - c. *The proposed works program for sewerage and drainage in North Byron Shire for 2021-22, 2022-23 and 2023-24*
 - 20 d. *Grants programs that council might apply for to clean and repair the drains and sewerage within North Byron Shire*
2. *That Council's internal drain clearing team (Storm Water Action Team) focus work within the North Byron Shire community over the next 6 months.*
3. *That members of North Byron Shire be invited to submit the worst cases of drainage or sewerage network disrepair to the relevant staff members for consideration into the future program of works, including the budget that is currently out on exhibition.*
- 25 4. *That a staff briefing be organised to give the opportunity for informed submissions and input with relevant representatives from the North Byron Shire community before the end of public exhibition of the 2022-23 budget, to discuss the program of works priorities and budget allocations for the next 3 years.*

30

RECOMMENDATION:





That Council notes the report on the drainage and sewer status north of the Shire.

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Attachments:

- 1 Urban Drainage Maintenance North, E2022/53860 
- 2 Capital Drainage Works 2022 to 2025, E2022/53912 
- 5 3 Drainage Capital Works 2017 to 2021, E2022/53922 
- 4 Ocean Shores - Sewer Network Conditions Report, E2022/54602 

Report

At Council's 27 May meeting, Council resolved 22-214:

Resolved:

1. *That Council receives a report at the June meeting on the following*
 - 5 a. *The historical (5 year) proportion of infrastructure spending that has been spent in the North Byron Shire area.*
 - b. *A timeline for the comprehensive assessment of the status of drains and sewerage infrastructure in North Byron Shire*
 - 10 c. *The proposed works program for sewerage and drainage in North Byron Shire for 2021-22, 2022-23 and 2023-24*
 - d. *Grants programs that council might apply for to clean and repair the drains and sewerage within North Byron Shire*
2. *That Council's internal drain clearing team (Storm Water Action Team) focus work within the North Byron Shire community over the next 6 months.*
- 15 3. *That members of North Byron Shire be invited to submit the worst cases of drainage or sewerage network disrepair to the relevant staff members for consideration into the future program of works, including the budget that is currently out on exhibition.*
- 20 4. *That a staff briefing be organised to give the opportunity for informed submissions and input with relevant representatives from the North Byron Shire community before the end of public exhibition of the 2022-23 budget, to discuss the program of works priorities and budget allocations for the next 3 years.*

The following is a response to each of the above items:

a. historical infrastructure spending

25 The historical (5 year) proportion of infrastructure spending that has been spent in the North Byron Shire area is provided across a number of attachments.

Attachment 1 provides 5 years spending on drainage maintenance

Attachments 2 and 3 provides 5 year spending on drainage capital renewal

Attachment 4 provides 4 year spending on utilities.

30 Staff have recently investigated the preferred drainage maintenance allocation that would provide the service level desired by Council. The following would be the initial budget allocation for the first year. The total northern allocation after year one would be \$1,560,000. This would need to increase with CPI each year to ensure the service level

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could continue and would be dependent upon suitable weather conditions for work to be completed each year.

	Reactive Maintenance	\$500,000
	Open Drain Slashing	\$269,740
5	Cleaning and desilting open drains	\$1,101,441
	Cleaning Underground Network	\$2,290,912
	Total	\$4,162,093

b. comprehensive assessment of Infrastructure

The following response has been split across the two different asset areas.

10 *Drainage:*

A comprehensive assessment of the status of open drains could be provided by the end of the calendar year with current resources, however, it is noted that this would only be open drains. Assessment of stormwater pits and pipes would take considerably longer and would require additional Council funding and resources because this requires Closed
15 Circuit Television (CCTV) inspection. At an estimated cost of \$400,000.

Sewerage Maintenance:

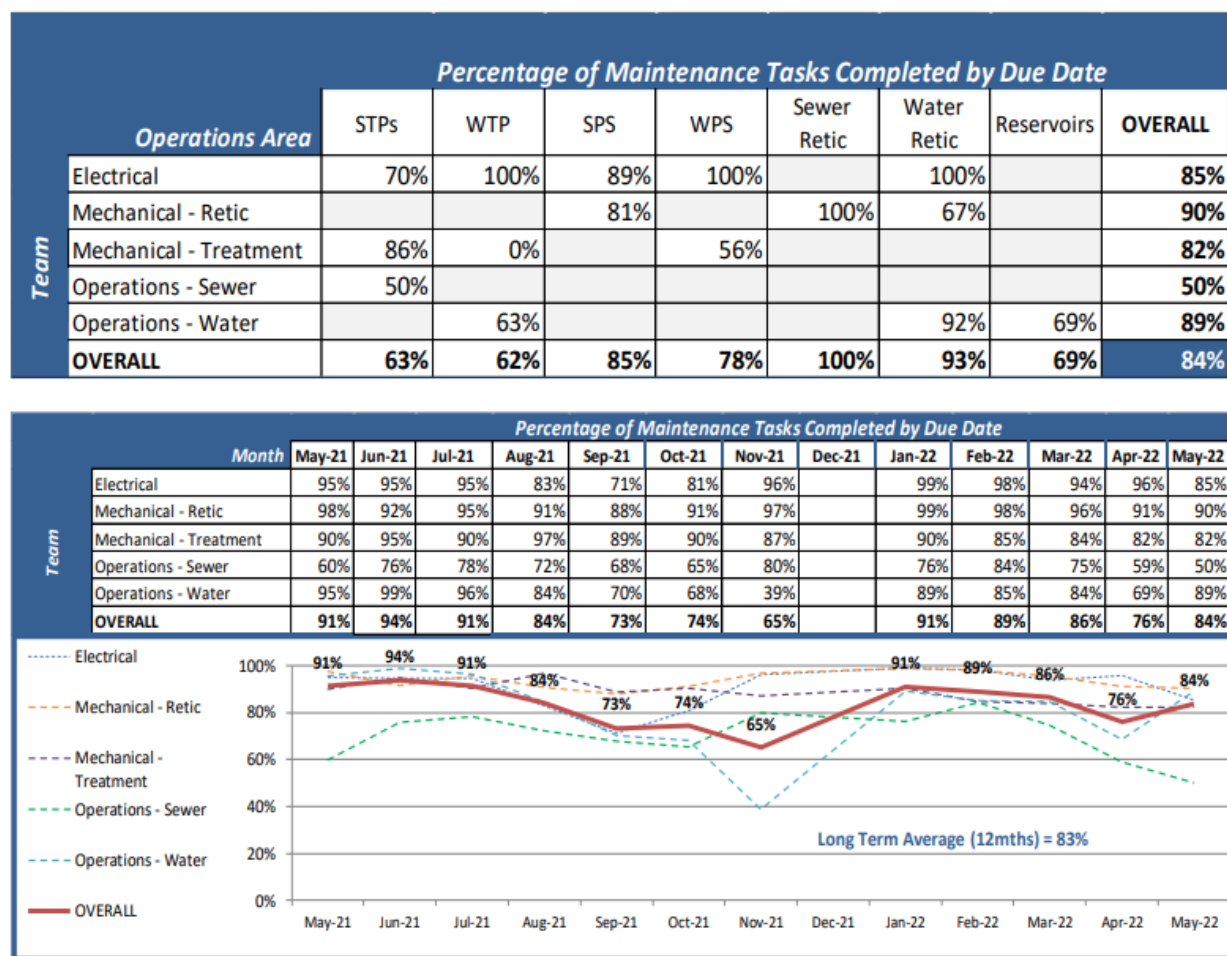
The table and graph below show the planned maintenance results over a 12-month trend. The Utilities department have a 80% planned maintenance KPI set as a measure in the Operations Plan. The current average is at 84%. This is for all water and sewer assets
20 and across the entire shire. This includes locations in the north of the shire.

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Planned Maintenance – Current Status by team & 12-month Trend



Sewer Capital:

There is approx. \$1.4M left in the budget under the Inflow & infiltration project (council resolved: \$2.5m Mullumbimby and \$2.5m rest of the shire over a 5-year program).

- However, the Utilities department undertakes sewer asset management and renewal program as core business to ensure sewer asset class remains within class 2 to 3 (depending on asset component), with a current average of 2.43 asset class from 1 to 6).

Attachment 4 shows Ocean shores sewer network condition. The average service state is 2.43 which is within the 2 to 3 asset KPI condition range.

- Brunswick heads, South Golden Beach, Billinudgel and New Brighton will be reported to the WWSAC once the asset condition reports have been completed, however, it is likely that the average service state of all these areas are within the 2 to 3 asset condition range.

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The table below identifies sewer pump station capital works over the next 4 years.

	Sewer Pump Stations (Capital Works) - Predictor			
	FY 22_23	FY 23_24	FY 24_25	FY 25_26
Ocean Shore	12 (\$210,999)	4 (\$95,738)	21 (\$293,635)	14 (\$169,845)
Brunswick Heads	13 (\$145,557)	6 (\$115,459)	8 (\$126,490)	11 (\$98,635)
South Golden Beach	3 (\$37,691)	13 (\$233,730)		0 2 (\$20,972)
Billinudgel	0	0	0	4 (\$15,685)
New Brighton	0	0	5 (\$50,835)	3 (\$71,885)

The table below identifies sewer mains capital works over the next 4 years.

	Gravity Sewer Mains (Capital Works) - 30 yr Cap Plan			
	FY 22_23	FY 23_24	FY 24_25	FY 25_26
Ocean Shore	\$ 30,222.00	\$ 66,483.00	\$ 168,804.00	\$ 503,099.00
Brunswick Heads	\$ 221,529.00	\$ -	\$ 398,362.00	\$ -
South Golden Beach	\$ -	\$ -	\$ -	\$ -
Billinudgel	\$ -	\$ -	\$ -	\$ -
New Brighton	\$ -	\$ -	\$ -	\$ -

5

The below table identifies capital works for sewer gravity pipes and man holes (inspection holes) over the next 4 years.

	Gravity Sewer Pipes/MHs (Capital Works)			
	FY 22_23	FY 23_24	FY 24_25	FY 25_26
Ocean Shore	68P/65MH \$ 350,000	50P/50MH \$ 250,000	50P/50MH \$ 250,000	50P/50MH \$ 250,000
Brunswick Heads	20P/20MH \$ 100,000		30P/30MH \$ 150,000	5P/5MH \$ 30,000
South Golden Beach		15P/15MH \$ 80,000		2P/2MH \$ 10,000
Billinudgel				
New Brighton			25P/25MH \$ 120,000	
TOTALS	\$ 450,000	\$ 330,000	\$ 520,000	\$ 290,000

Note: Text in red is currently estimates only.

10 The table below identifies sewer gravity pipes for inspection and assessment (CCTV)

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	Gravity Sewer Pipes (Assessments)			
	FY 22_23	FY 23_24	FY 24_25	FY 25_26
Ocean Shore	14km \$ 150,000	5.7km \$ 60,000	3.4km \$ 35,000	2.5km \$ 25,000
Brunswick Heads		4.6km \$ 55,000	0.4km \$ 4,000	1.3km \$ 13,000
South Golden Beach	3km \$ 35,000		0.4km \$ 4,000	
Billinudgel				1.2km \$ 12,000
New Brighton		5.4km \$ 60,000		
TOTALS	\$ 185,000	\$ 175,000	\$ 43,000	\$ 50,000

The table below identifies manhole/inspection hole assessments

	Manhole (Assessments)			
	FY 22_23	FY 23_24	FY 24_25	FY 25_26
Ocean Shore	264 \$ 30,000	108 \$ 12,000	70 \$ 8,000	50 \$ 6,000
Brunswick Heads		88 \$ 10,000	8 \$ 1,000	30 \$ 3,500
South Golden Beach	50 \$ 6,000	103 \$ 11,000	8 \$ 1,000	
Billinudgel				25 \$ 3,000
New Brighton				
TOTALS	\$ 36,000	\$ 33,000	\$ 10,000	\$ 12,500

The table below identifies cost summary for sewer capital, inspections/assessment and man holes/inspection home assessments (4 year total).

5

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	FY22-26 Capital	FY22-26 CCTV	FY22-26 MH Assessments
Ocean Shore	\$ 1,100,000	\$ 270,000	\$ 56,000
Brunswick Heads	\$ 280,000	\$ 72,000	\$ 14,500
South Golden Beach	\$ 90,000	\$ 39,000	\$ 18,000
Billinudgel	\$ -	\$ 12,000	\$ 3,000
New Brighton	\$ 120,000	\$ 60,000	\$ -

c. The proposed works program for sewerage and drainage in North Byron Shire for 2022-23, 2023/24 and 2024-25 is provided at attachments 2 and 3 respectively.

5 d. Grants programs

Grant funding is not currently available for drainage repair and maintenance. This is generally the case because grants typically are aimed at new or upgraded infrastructure. New infrastructure drainage programs could be supported under the NSW Floodplain Management Grants, however, this still requires a one third Council contribution.

- 10 Council is awaiting guidelines relating to an additional \$2 million natural disaster funding that has been announced. Under the first round of funding drainage maintenance was not eligible, but the request for drainage upgrades and maintenance eligibility has been made for the upcoming funding release.

2. Stormwater Action Team Focus

- 15 Council's internal drain clearing team (Storm Water Action Team) are currently focusing works within the North Byron Shire community and will continue to do so over the next 6 months based on the draft 2022/23 budget.

3. Community consultation

This item has been actioned and responses are being received.

20 4. Community briefing

This item has been actioned a session was held at the rear of the Billinudgel Pub between 4-6pm on Monday 6 June 2022.

Related Resolution

Another related resolution is Res 22-173

22-173 Resolved:

- 5 1. *That Council acknowledges the community meeting regarding flooding and drainage held on Tuesday 26th April at the Ocean Shore Country Club organised by the Ocean Shores Community Association and the important and urgent nature of many of the issues discussed.*

- 10 2. *That Council commits to considering each of the 21 requests, or 'NoMs', discussed at the meeting and listed as an attachment to this motion, and provides formal responses, including on actions taken, or planned to be taken following the Ordinary Council meeting on June 22nd at the latest.*

3. *That at least one hour be put aside for the June 2 Strategic Planning Workshop to discuss this matter.*

Staff Comments

- 15 1 Councillors have submitted a series of NOMs for Council consideration since the February Flood Event and staff have been progressively actioning subsequent resolutions and these will be reported accordingly as required by the specific resolutions.

- 20 2 Councillors and staff participated in a Strategic Planning Workshop on 2 June 2022 to review the 21 requests. An updated response on the status of the issues will be sent to OSCA by end of 22 June 2022.

- 3 Refer to 2 above.

25 Next steps

Council to recommend any further actions.

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
Community Objective 1: We have infrastructure, transport and services	1.1: Provide a road network which is safe, accessible and maintained to an acceptable	1.1.6: Provide stormwater infrastructure to manage flood mitigation, social and	1.1.6.1	Review and update 10 year Stormwater Levy program
			1.1.6.3	Deliver Annual Urban Drainage Maintenance works

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CSP Objective	CSP Strategy	DP Action	Code	OP Activity
which meet our expectations	level of service	environmental outcomes	1.1.6.9	Deliver Stormwater Capital Maintenance Renewal Works Program
	1.5: Provide continuous urban water and sewerage services within the Shire	1.5.2: Ensure Wastewater Treatment Plants are maintained in accordance with operating licences	1.5.2.6	Inflow/Infiltration for the rest of the Shire excl. Mullumbimby carry out condition assessments of prioritised catchments and develop capital works budget
			1.5.2.10	Byron Bay - Sewerage Pump Station Renewals
			1.5.2.17	Design - Ocean Shores to BVSTP transfer pump station and rising main
			1.5.2.18	Design - Ocean Shores transfer to BVSTP Option 4 - STP Process Elements
		1.5.3: Ensure Water Supply is maintained in accordance with NSW Health guidelines	1.5.3.3	Review Asset Management Plans for Water and Sewer Assets
			1.5.3.11	Ocean Shore Water Pipeline Renewal Casons Lane, New Brighton
			1.5.3.12	Ocean Shores Yamble Water Pump Station - Renewal of pump and electrical.
		1.5.4: Implement the Water and Sewerage Strategic Business Plan	1.5.4.1	Brunswick Heads Sewerage Pump Station Renewals
			1.5.4.3	Ocean Shores Sewer Pump Station Renewals
		1.5.5: Ensure	1.5.5.1	Sewer Asset

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CSP Objective	CSP Strategy	DP Action	Code	OP Activity
		strategic infrastructure planning documents are in line with Community Solutions Panel values (SP)		Management Plan
		1.5.6: Protect and enhance our natural environment and biodiversity	1.5.6.2	Implement real time (SCADA) monitoring of nutrient loads at both inlet/outlet at Byron and Brunswick Valley Council Operated STP's

Legal/Statutory/Policy Considerations

Council has a general duty of care to provide reasonable infrastructure, as resources and priorities permit. Where existing infrastructure becomes known to be inadequate for any reason within the control of Council, repair, renewal and upgrade of drainage assets for the provision of stormwater is a fundamental component of meeting Council's obligations.

Provision of stormwater infrastructure is a legitimate function of local government under the Local Government Act 1993. To the extent that the provision of stormwater infrastructure protects public roads, other infrastructure, Council land, Crown land, private land and the community. Council is also responsible for drainage under the Roads Act 1993.

In all cases, Council must meet its obligation to provide a satisfactory and safe level of drainage for the Shire's residents and a drainage network which is maintained in a condition which is not likely to endanger the Shire's residents during or after a rainfall event.

Financial Considerations

As outlined in the report financial sewer fund had adequate funding to support future capital, maintenance, and operational requirements north of the shire over the next 5 years.

As outlined in the report costs associated with the general fund for drainage is identified in the report.

Consultation and Engagement

The community are currently being consulted on this matter.

Report No. 13.4 Councillor Expenses and Facilities Policy

Directorate: Corporate and Community Services

Report Author: Heather Sills, Corporate Planning and Improvement Coordinator

5 **File No:** I2022/226

Summary:

10 [Section 252](#) of the *Local Government Act 1993* (LG Act) requires Council, within the first 12 months of each term of a Council, to adopt a policy concerning the payment of expenses incurred or to be incurred by, and the provision of facilities to the mayor, the deputy mayor, and the other councillors in relation to discharging the functions of civic office.

A draft Councillor Expenses and Facilities Policy (Policy) has been prepared in accordance with the Office of Local Government's better practice Councillors Expenses and Facilities Policy template.

15 The Policy enables the reasonable and appropriate reimbursement of expenses and provision of facilities to Councillors to help them undertake their civic duties. It ensures accountability and transparency and seeks to align Councillor expenses and facilities with community expectations. Councillors must not obtain private or political benefit from any expense or facility provided under the Policy.

20 This report seeks Council's endorsement for public exhibition of the draft Policy.

RECOMMENDATION:


25 1. **That in accordance with Section 253 of the *Local Government Act 1993*, Council endorses the Councillor Expenses and Facilities Policy (#E2021/147065) to be placed on public exhibition for a minimum period of 28 days.**

2. **That in the event:**

30 a) **any submissions are received on the draft Policy, those submissions be reported back to Council, prior to the adoption of the Policy.**

 b) **no submissions are received on the draft Policy, the Policy be adopted.**

Attachments:

35 1 Draft Councillor Expenses and Facilities Policy, E2021/147065 

Report

The Councillor and Expenses Policy seeks to ensure transparency and good governance for the payment of Councillor expenses and provision of facilities. Council must review, exhibit, and adopt an expenses and facilities policy within the first 12 months of its term.

- 5 The last review of the Policy was undertaken in early 2018 to align with the Office of Local Government [Better Practice Template](#). The Policy template was prepared to be consistent with the *LG Act* and *Local Government (General) Regulation 2005* (the Regulation) and the Office of Local Government's (OLG) *Guidelines for the payment of expenses and provision of facilities for mayors and councillors in NSW* (the Guidelines).
- 10 A subsequent minor amendment was endorsed by Council in June 2020 to account for the extension of the term of Council due to the postponement of the 2020 Local Government Election.

Policy Amendments

A draft Policy with suggested amendments and comments is provided at Attachment 1.

- 15 **Black text** is from OLG template
Teal text are Council's current additions
Purple text are suggested amendments

The following items are changes included in the policy for consideration.

Table 1 – Items for Review

Item	Options	Rationale
Expense amounts	Suggested amendments to the specific expense limits are provided in Table 2.	Amended costs based on actual expenditure in previous years and to apply a more equitable distribution for some categories of expenditure.
6-monthly reporting	The current policy provides a statement that: <i>“Detailed reports on the provision of expenses and facilities to councillors will be publicly tabled at a council meeting every six months and published in full on council’s website. These reports will include expenditure summarised by individual councillor and as a total for all councillors.”</i>	Council includes details of Councillor Expenses and Facilities in its Annual Report, in compliance with the <i>LG Act</i> .

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Item	Options	Rationale
	Amendment: <i>“Detailed reports on the provision of expenses and facilities to councillors will be included in Council’s Annual Report, in compliance with the requirements of the Local Government Act 1993.”</i>	
Travel expenses not paid by Council	Suggested additional clause 6.19 <i>“Councillors seeking to extend their travel while on a Council trip must notify the General Manager prior to making arrangements. Councillors will be responsible for all expenses associated with the extension of travel.”</i>	Additional clause for clarity.
Retention of ICT equipment purchased under the policy	Option to include the following clause to clarify retention for items for which Councillors seek reimbursement: <i>“6.45. All items provided by Council or for which Council has paid via reimbursement remain the property of Council and are required to be returned subject to Clause 13.”</i>	The intent of the policy is for Councillors to be provided with equipment to effectively perform their civic duties. <i>“4.1. Councillors must not obtain private or political benefit from any expense or facility provided under this Policy.”</i> Allowing Councillors to retain equipment paid for by Council either through direct purchase or reimbursement could be seen as giving a private benefit to that Councillor. This position has been confirmed by advice from the Office of Local Government.
Return or retention of facilities	Clause 13 currently states that: <i>“Should a Councillor desire to keep any equipment allocated by Council, then</i>	For clarity.

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Item	Options	Rationale
	<p><i>this Policy enables the Councillor to make application to the General Manager to purchase any such equipment. The General Manager will determine an agreed fair market price or written down value for the item of equipment."</i></p> <p>Amendment: <i>"Should a Councillor desire to keep any equipment allocated by Council, then this Policy enables the Councillor to make application to the General Manager to purchase any such equipment. The General Manager will determine an agreed fair market price or residual value based on ATO guidelines."</i></p>	
Home office expenses	<p>Recommend inclusion of a small amount (\$500/Councillor each term) for 'home office equipment' that is not otherwise captured in the ICT equipment provision. For example, suitable chair, filing cabinet, etc.</p> <p>Remove the specific reference to provision of a "four draw filing cabinet..." later in the policy, under general facilities.</p>	<p>The OLG template provides for 'home office expenses,' however this is not currently included in the Policy. Given the changes to the <i>Code of Meeting Practices</i> allowing Councillors to attend Council Meetings remotely, it may be deemed appropriate to set aside a small amount for home office equipment, separate to the ICT equipment, for the purchase of a suitable chair for example.</p>

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Table 2 – Maximum Expense Amounts

Expense or facility	CURRENT Maximum amount (total allocation or per councillor)	RECOMMENDED	Frequency
General travel expenses	\$17,700 – total	\$18,000 – total (\$2,000 per Councillor as a general guide)	Annual
Accommodation and meals	As required – refer to Part B Monetary Rates of the NSW Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009 as a guide	No change	Per meal/night
Professional development	\$10,000 – total	Combine Professional Development and Conferences and Seminars \$31,500 – total combined (\$3,500 per Councillor as a general guide)	Annual
Conferences and seminars	\$ 31,500 – total	Combined with above	Annual
ICT equipment and consumables	\$3,700/councillor (year 1 of term) \$2,000/councillor year 2 of term) \$2,000/councillor year 3 of term) \$1,000/councillor (year 4 of term) \$1,000/councillor (year 5 of term)	\$7,500 per Councillor for term of office. Plus provision of standard iPad on commencement of term.	Term
ICT support services	\$2,000 – total	\$1,800 – total (\$200 per Councillor as a general guide)	Annual
Home office expenses		New provision: \$500	Term
Telephone (fixed line/mobile)	\$235 (Mayor) \$200 (Councillors)	\$235 (Mayor) \$200 (Councillors) Data plan on iPad	Monthly

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Expense or facility	CURRENT Maximum amount (total allocation or per councillor)	RECOMMENDED	Frequency
Access to facilities in Councillor room	Provided to all councillors	No change	
Council vehicle and fuel card	Provided to the Mayor	No change	
Reserved parking space at Council offices	Provided to the Mayor	No change	
Furnished office and meeting space	Provided to the Mayor	No change	
Support staff [Clause 10]	Provided to all councillors	No change	

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
Community Objective 5: We have community led decision making which is open and inclusive	5.2: Create a culture of trust with the community by being open, genuine and transparent	5.2.4: Support Councillors to carry out their civic duties	5.2.4.4	Provide support to Councillors – including councillor requests, briefing sessions, provision of facilities and payment of expenses, and record keeping

Legal/Statutory/Policy Considerations

- 5 [Section 252](#) of the *Local Government Act 1993* (LG Act) requires Council, within the first 12 months of each term of a Council, to adopt a policy concerning the payment of expenses incurred or to be incurred by, and the provision of facilities to the mayor, the deputy mayor, and the other councillors in relation to discharging the functions of civic office.

Financial Considerations

- 10 Provision will be made in future Council budgets to accommodate the requirements of this policy.

Consultation and Engagement

Council must give public notice of its intention to adopt or amend a policy for the payment of expenses or provision of facilities, allowing at least 28 days for public submissions.

Council must consider any submissions and make appropriate changes.

Report No. 13.5 Review of Council Policies 2021-2022

Directorate: Corporate and Community Services

Report Author: Mila Jones, Governance and Internal Audit Coordinator

File No: I2021/1691

5 **Summary:**

Council must comply with the *Local Government Act 1993* which requires a review of statutory policies within 12 months of an election. This report provides commentary on the status of the five statutory policies required to be reviewed by December 2022, including one statutory policy recommended for readoption, and deals with one additional policy proposed to be repealed.

As part of Council's compliance framework, an annual review of Council policies is undertaken, and reports are regularly provided to Council on the status of this review program. A status update of Council's policy review program is provided for information.

Note: The Code of Meeting Practice and the Codes of Conduct have been the subject of separate reports to Council since 3 February 2022.

RECOMMENDATION:

1. That Council adopts the unamended Local Orders for the Keeping of Animals Policy 2021, per s161(2) of the Local Government Act 1993.
2. That the Events on Public and Private Land Policy 2010 be placed on public exhibition, for repeal, for 28 days, and
 - a) should there be no submissions received the repeal be endorsed; or
 - b) should submissions be received the policy be reported back to Council noting the submissions and any amendments made as a result of the feedback received.

Attachments:

- 1 Policy Status as at 30 June 2022, E2022/49943 

Report

An important element of public sector governance is establishing key policies and ensuring they are available, regularly updated and monitored for compliance.

5 In 2022, Council is required to review and adopt the following statutory policies within 12 months of the 2021 election:

Under [Chapter 7, Part 3 of the Local Government Act 1993](#)

- Local Orders for the Keeping of Animals Policy – subject of this report.
- Local Approvals Policy – subject of a separate report in the coming months

Under [s360 of the Local Government Act 1993](#)

- 10
- Code of Meeting Practice – previously reported to Council on 3 February 2022 and 24 March 2022, and at the time of preparing this report is on the agenda for the 9 June 2022 meeting.

Under [s440 of the Local Government Act 1993](#)

- 15
- Code of Conduct – previously reported to and adopted at the Extraordinary Meeting held on 3 February 2022

Under [s252 of the Local Government Act 1993](#)

- Councillor Expenses and Facilities Policy – subject of a separate report to this meeting

20 To avoid a large number of policies being presented to Council at once, and to manage the workload of Councillors and staff, the annual review of all of Council's policies is undertaken in stages. It is also often necessary for a number of policies to be presented to Advisory Committees or Panels for input prior to being reported to Council for decision.

25 When policies are reviewed, they are assessed as to whether the policy is current, redundant, requires updating, can be aggregated with another policy or may be converted to a Standard (internal staff policy), Procedure or Guideline.

When reviewing our policies, Council's Corporate Documents Standard (internal policy) provides the following guidance to staff:

30 *A Policy sets out Byron Shire Council's position on a specific matter – a formal statement of intent and non-discretionary governing principles that apply to Byron Shire Council's practice. The principles are derived from and shaped by the law and regulations that apply, community expectations, and the values and mission contained in the adopted Community Strategic Plan. A Policy is a concise document that may facilitate, enable or constrain practice, standard, guidelines or delegated functions but does not prescribe in detail how to*
35 *perform certain functions - instead it provides a framework for action with its*

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primary role being to guide the achievement of the adopted strategic goals and ensure legislative compliance.

- 5 The most recent developments in legislative requirements, and the community's and Council's position on certain matters, have been checked for each policy to determine whether a policy required updating, or whether a policy was still necessary. A policy may no longer be necessary, for instance, if legislation now wholly covers Council's policy position, or if a Policy reflects legislation that no longer exists.

The status of Council's policies is also presented to the Audit, Risk and Improvement Committee annually.

- 10 The status of Council's 97 policies as at 30 June 2022 is:

Status as at 30 June 2022	Number	Percentage
Current	80	82.5%
Submitted to Council	2	2%
Review Initiated	12	12.4%
Overdue for Review	3	3.1%
Total Policies	97	100%

Table 1: Reviewed Policies

The following policy was reviewed and is recommended for adoption.

Policy	Directorate	Action taken
<u>Local Orders for the Keeping of Animals Policy 2021</u>	SEE	This Statutory Policy requires review within 12 months of a new term of Council. The Policy has been reviewed by staff and requires no further update since the last comprehensive review in 2021.

Table 2: Policies for repeal

The following policy is recommended for repeal since the information provided in the policy is either available and covered elsewhere, now treated differently and/or is no longer current.

Policy	Directorate	Reason for repeal
<u>Events on Public and Private Land Policy 2010</u>	SEE	<p>This policy is proposed to be repealed as the policy statements within the document are covered under Council's more comprehensive <u>Event Guide</u> and by the events assessment process. Point 2.7 (restriction of number of events) no longer applies. Therefore this policy is no longer required.</p> <p>Council also has a <u>Temporary Use of Land Policy</u>.</p>

5 Next steps – Review 2022-2023

Staff continue to review Council policies, with the Governance team providing the processes and framework to support currency across the organisation. A rolling four-year policy review timetable assists the review process (shown at Attachment 1).

- 10 Due to resourcing constraints and the need to reprioritise work following the disaster events in early 2022, any policies currently outstanding for review and those listed in the 2022-23 program may need to be reprioritised.

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy		DP Action		OP Activity	
Community Objective 5: We have community led decision making which is open and inclusive	5.2	Create a culture of trust with the community by being open, genuine and transparent	5.2.3	Provide access to publicly available corporate registers	5.2.3.2	Review, update and publish Council policies online and report on the status of Council's policy register
Community Objective 5: We have community led decision making which is open and inclusive	5.2	Create a culture of trust with the community by being open, genuine and transparent	5.2.1	Provide timely, accessible and accurate information to the community	5.2.1.6	Review and update Council business templates for consistency and accessibility

Recent Resolutions

Adoption of Code of Conduct on 3 February 2022 (Res 22-17).

Legal/Statutory/Policy Considerations

5 Each policy is reviewed to ensure consistency with the relevant legislation, agency guidelines, rules or protocols.

Councils have a number of statutory policies that it must adopt the rest are optional. These optional policies are useful to:

- reflect a council's key issues and responsibilities
- guide staff and ensure consistency
- 10 • clearly inform the public of a council's commitments

Local Government Act

- Relevant sections of the Act are provided at the beginning of this report

Community Strategic Plan

15 The CSP is the top-level document for Council which sets out the community's and council's aspirations.

As such they give guidance for developing policies, which should reflect and be consistent the CSP. The CSP is reviewed every four years and therefore policies need to be reviewed at this time also.

Financial Considerations

20 There are no financial considerations.

Consultation and Engagement

Prior to this Ordinary Meeting:

- Relevant document development officers
- Managers
- 25 • Executive Team

Following this Ordinary Meeting the reviewed documents will be placed on public exhibition in order to receive submissions.

**Report No. 13.6 Local Government NSW Annual Conference
2022**

Directorate: Corporate and Community Services

Report Author: Heather Sills, Corporate Planning and Improvement
Coordinator

File No: I2022/555

Summary:

The Local Government NSW Annual Conference 2022 will be held from Sunday, 23 October to Tuesday, 25 October 2022 at the Crowne Plaza Hunter Valley.

Council is entitled to three voting delegates in the debating session. In accordance with the Councillor Expenses and Facilities Policy, *“A resolution of Council is required to authorise attendance of Councillors at LGNSW Conference(s) as a voting delegate.”*

RECOMMENDATION:

That Council authorises the attendance of Crs _____, _____, and _____ as voting delegates at the Local Government NSW Annual Conference 2022, to be held from 23 to 25 October 2022.

Report

The Local Government NSW (LGNSW) Annual Conference 2022 will be held from Sunday, 23 October to Tuesday, 25 October 2022 at the Crowne Plaza Hunter Valley.

- 5 Council is entitled to three voting delegates in the debating session. This number is determined by population, further information is available [here](#).

In accordance with the Councillor Expenses and Facilities Policy, “A resolution of Council is required to authorise attendance of Councillors at LGNSW Conference(s) as a voting delegate.”

- 10 Council is to notify LGNSW of its voting delegates by Monday, 10 October 2022.
Nominations of voting delegates received after the closing date/time will not be accepted.

Motions

- 15 All member Councils can put forward motions by Monday, 29 August 2022 to allow for preparation of the Business Paper before the Conference. Under the LGNSW Rules, the latest date motions can be accepted for inclusion in the business paper is Sunday, 25 September 2022.

- 20 Proposed motions should be strategic, affect members state-wide and introduce new or emerging policy issues and actions. Members are encouraged to review the [Action Reports](#) from previous conferences and positions of LGNSW, as set out in the [LGNSW Policy Platform](#), before submitting motions for the 2022 Conference. These resources will assist with the drafting of motions.

- 25 Councillors can put forward motions to be considered at the Conference, but they must first be endorsed by Council prior to submission. The Councillor Expenses and Facilities Policy states at clause 6.40 that “*Submission of motions to the Local Government NSW Annual Conference... for consideration by Council will be done by notice of motion, which can be considered during the year.*”

Councillors may submit a notice of motion to the 25 August Ordinary Meeting of Council, by the Notice of Motion deadline: Tuesday, 9 August 2022. Notices of Motion considered and endorsed by Council at this meeting will be submitted by the conference deadline of 29 August 2022.

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
Community Objective 5: We have community led decision making which is open and inclusive	5.2: Create a culture of trust with the community by being open, genuine and transparent	5.2.4: Support Councillors to carry out their civic duties	5.2.4.4	Provide support to Councillors – including councillor requests, briefing sessions, provision of facilities and payment of expenses, and record keeping

Legal/Statutory/Policy Considerations

- 5 In accordance with Council's Mayor and Councillors Payment of Expenses and Provision of Facilities Policy, "A resolution of Council is required to authorise attendance of Councillors at Local Government and Shires Association Conference(s) as a voting delegate."

Financial Considerations

- 10 The draft 2022/23 budget provides an allocation of \$31,500.00 for Councillor attendance at conferences.

Conference costs were not available at the time of preparing this report, however estimated costs **per person**:

15	Registration Fee	\$900.00
	Flights (approx)	\$400.00
	Conference Functions (approx)	\$300.00
	Accommodation (approx)	<u>\$1,200.00</u>
	Total	\$2,800.00

Consultation and Engagement

- 20 Not applicable.

Report No. 13.7 Appointment of Community Representatives to the Audit, Risk and Improvement Committee - Reconsideration

Directorate: Corporate and Community Services

5 **Report Author:** Mila Jones, Governance and Internal Audit Coordinator

File No: I2022/641

Summary:

10 On 12 May 2022 Council appointed a new member to the Audit, Risk and Improvement Committee. Since then, a resignation has been received from one Committee member. Due to the short time frame since the last expression of interest process, five of the six applicants included in the last report to Council on 12 May 2022 are provided for reconsideration by Council, with their agreement.

15

RECOMMENDATION:

- 20 1. That Council selects one community representative from the options provided at Attachment 1 (E2022/51077), and they be appointed to the Audit, Risk and Improvement Committee for the remainder of the 2022-2024 term ending September 2024.
2. That the appointed Committee member:
- a) be notified of their appointment to the Committee; and
 - b) complete induction, Code of Conduct, and confidentiality requirements.
- 25 3. That unsuccessful nominees be notified.

Attachments:

- 30 1 Confidential - ARIC membership nominations 2022 (third round) - 5 nominations combined, E2022/51077

Report

On 12 May 2022 Council appointed the third member of the Audit, Risk and Improvement Committee (ARIC). Since then, and following the first ARIC meeting of the new term of Council, a resignation was received from one of the Committee members.

- 5 Due to the short time frame since the last expression of interest process, five of the six applicants included in the last report to Council on 12 May 2022 are now provided for reconsideration by Council. All applicants have confirmed interest in being considered.

The nominations are provided at Attachment 1.

Committee membership includes:

- 10
- Crs Hunter and Swivel
 - Three community/subject matter experts

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
Community Objective 5: We have community led decision making which is open and inclusive	5.1: Engage and involve community in decision making	5.1.1: Facilitate inclusive community consultation and stakeholder engagement to inform Council decision making (SP)		NA
Community Objective 5: We have community led decision making which is open and inclusive	5.2: Create a culture of trust with the community by being open, genuine and transparent	5.2.4: Support Councillors to carry out their civic duties	5.2.4.5	Implement and manage Code of Conduct training programs for Councillors, staff, and committee members
Community Objective 5: We have community led decision making which is open and inclusive	5.6: Manage Council's resources sustainably	5.6.7: Develop and embed a proactive risk management culture	5.6.7.4	Coordinate the Audit Risk and Improvement program

Recent Resolutions

- **22-026** Extraordinary Meeting [3 February 2022](#)
- **22-098** Ordinary Meeting [24 March 2022](#)
- **22-188** Ordinary (Planning) Meeting [12 May 2022](#)

5 Legal/Statutory/Policy Considerations

Advisory committees operate under an adopted Constitution and Council's Code of Meeting Practice, as well as under the Local Government Act.

Financial Considerations

- 10 This Committee is a statutory requirement of Council and therefore its community members are able to be reimbursed based on an agreed fee. The fee payable to community members is included in the Audit, Risk and Improvement Committee budget (2052.6). The amount proposed in the Draft 2022/23 Budget is \$15,700.

The Draft Office of Local Government Guidelines (August 2021) notes that chairs and members can serve on a committee on a voluntary basis if they choose to.

15 Consultation and Engagement

- 20 Nominations were open from 8 February 2022 and closed on 28 February 2022 from which the first two members were appointed. The call for expressions of interest was then reopened from 15 March 2022 to 1 April 2022 with no nominations received. The period was then extended from 1 April to 25 April 2022 resulting in 6 nominations, and reported to Council on 12 May 2022 from which a third appointment was made. Five of those nominations are resubmitted to this meeting.

Report No. 13.8 Council Investments - 1 May 2022 to 31 May 2022

Directorate: Corporate and Community Services

Report Author: James Brickley, Manager Finance

5 **File No:** I2022/657

Summary:

Summary:

This report includes a list of investments and identifies Council's overall cash position for the period 1 May 2022 to 31 May 2022 for information.

10 This report is prepared to comply with Section 212 of the *Local Government (General) Regulation 2021*.

15 **RECOMMENDATION:**

That Council notes the report listing Council's investments and overall cash position as at 31 May 2022.

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Report

Council has continued to maintain a diversified portfolio of investments. As of 31 May 2022, the average 90-day bank bill rate (BBSW) for the month was 0.99%. Council's performance to May 2022 was 0.49%.

- 5 It should be noted that as investments mature, Council should begin to see increased rates due to the recent Reserve bank increase in cash rates. The table below identifies the investments held by Council as at 31 May 2022

Schedule of Investments held as at 31 May 2022

Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	No Fossil Fuel	Type	Int. Rate	Current Value (\$)
15/11/18	1,000,000.00	NSW Treasury Corp (Green Bond)	N	AAA	15/11/28	Y	B	3.00%	972,450.00
20/11/18	1,000,000.00	QLD Treasury Corp (Green Bond)	N	AA+	22/03/24	Y	B	2.38%	1,004,510.00
28/03/19	1,000,000.00	National Housing Finance & Investment Corporation	Y	AAA	28/03/29	Y	B	0.18%	928,200.00
21/11/19	1,000,000.00	NSW Treasury Corp (Sustainability Bond)	N	AAA	20/03/25	Y	B	1.25%	952,200.00
27/11/19	500,000.00	National Housing Finance & Investment Corporation	Y	AAA	27/05/30	Y	B	1.52%	422,010.00
06/09/21	1,000,000.00	Northern Territory TCorp	N	Aa3	15/12/26	Y	B	1.40%	1,000,000.00
16/09/21	1,000,000.00	QLD Treasury Corp (Green Bond)	N	AA+	02/03/32	Y	B	1.50%	928,180.00

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Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	No Fossil Fuel	Type	Int. Rate	Current Value (\$)
15/06/21	500,000.00	National Housing Finance & Investment Corporation	Y	AAA	01/07/31	Y	FRN	0.41%	501,425.00
30/07/21	1,000,000.00	AMP Bank	P	BBB	28/06/22	Y	TD	0.75%	1,000,000.00
04/11/21	2,000,000.00	NAB	P	AA-	04/11/22	N	TD	0.45%	2,000,000.00
09/12/21	2,000,000.00	NAB	N	AA-	07/06/22	N	TD	0.50%	2,000,000.00
17/12/21	2,000,000.00	NAB	N	AA-	19/12/22	N	TD	0.50%	2,000,000.00
05/01/22	2,000,000.00	NAB	N	AA-	04/07/22	N	TD	0.52%	2,000,000.00
20/01/22	1,000,000.00	Westpac (Tailored)	P	AA-	20/01/23	N	TD	0.79%	1,000,000.00
31/01/22	1,000,000.00	NAB	N	AA-	31/05/22	N	TD	0.43%	1,000,000.00
22/02/22	1,000,000.00	Macquarie Bank Ltd	P	A	23/08/22	N	TD	0.65%	1,000,000.00
25/02/22	1,000,000.00	Macquarie Bank Ltd	N	A	25/08/22	N	TD	0.65%	1,000,000.00
08/03/22	2,000,000.00	Suncorp	P	A+	05/09/22	Y	TD	0.30%	2,000,000.00
09/03/22	2,000,000.00	NAB	N	AA-	08/06/22	N	TD	0.45%	2,000,000.00
29/4/2022	2,000,000.00	NAB	N	AA-	28/07/2022	N	TD	1.05%	2,000,000.00
04/05/22	2,000,000.00	NAB	N	AA-	02/08/22	N	TD	1.20%	2,000,000.00
20/05/2022	2,000,000.00	NAB	N	AA-	16/11/2022	N	TD	2.05%	2,000,000.00
31/05/2022	2,000,000.00	NAB	N	AA-	29/08/2022	N	TD	1.60%	2,000,000.00
N/A	21,810,689.25	CBA Business Saver	N	AA-	N/A	N	CALL	0.20%	21,810,689.25
N/A	5,942,985.59	CBA Business Saver – Tourism Infrastructure Grant	N	AA-	N/A	N	CALL	0.20%	5,942,985.59

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Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	No Fossil Fuel	Type	Int. Rate	Current Value (\$)
N/A	18,049,791.51	Macquarie Accelerator Call	N	A	N/A	N	CALL	0.35%	18,049,791.51
Total	77,803,466.35						AVG	0.49%	77,512,441.35

Note 1. CP = Capital protection on maturity

N = No Capital Protection

Y = Fully covered by Government Guarantee

P = Partial Government Guarantee of \$250,000 (Financial Claims Scheme)

Note 2. No Fossil Fuel ADI

Y = No investment in Fossil Fuels

N = Investment in Fossil Fuels

U = Unknown Status

Note 3. Type Description

B Bonds

Principal can vary based on valuation, interest payable via a fixed interest, payable usually each quarter.

FRN Floating Rate Note

Principal can vary based on valuation, interest payable via a floating interest rate that varies each quarter.

TD Term Deposit

Principal does not vary during investment term. Interest payable is fixed at the rate invested for the investment term.

CALL Call Account

Principal varies due to cash flow demands from deposits/withdrawals. Interest is payable on the daily balance.

Environmental and Socially Responsible Investing (ESRI)

An additional column has been added to the schedule of Investments to identify if the financial institution holding the Council investment has been assessed as a 'No Fossil Fuel' investing institution. This information has been sourced through www.marketforces.org.au and identifies financial institutions that either invest in fossil fuel related industries or do not. The graph below highlights the percentage of each classification across Council's total investment portfolio in respect of fossil fuels only.

The notion of Environmental and Socially Responsible Investing is much broader than whether a financial institution as rated by 'marketforces.org.au' invests in fossil fuels or

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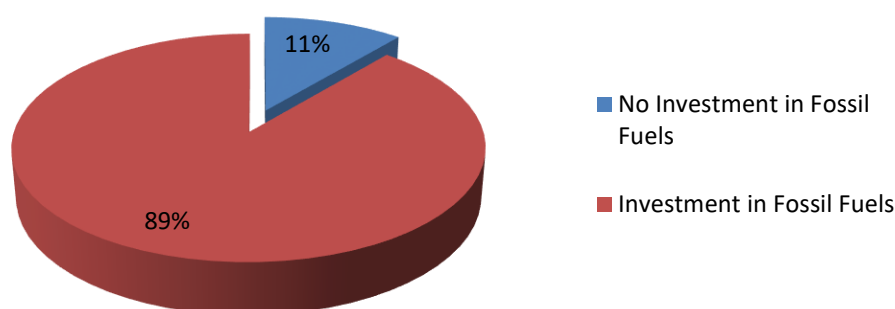
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not. Council's current Investment Policy defines Environmental and Socially Responsible Investing at Section 4.1 of the Policy which can be found on Council's [website](#).

Council has one investment with a financial institution that invests in fossil fuels but is nevertheless aligned with the broader definition of Environmental and Socially Responsible investments i.e.:

1. \$1,000,000 investment with Westpac Bank maturing on 20 January 2023 is a tailored term deposit and certified green investment.



Investment Policy Compliance

- 10 The below table identifies compliance with Council's Investment Policy by the proportion of the investment portfolio invested with financial institutions, along with their associated credit ratings compared to parameters in the Investment Policy. The parameters are designed to support prudent short and long-term management of credit risk and ensure diversification of the investment portfolio. Note that the financial institutions currently offering investments in the 'ethical' area are still mainly those with lower credit ratings (being either BBB or not rated at all i.e., credit unions).
- 15

Investment policy compliance % should not exceed the following			ACTUAL	
AAA to AA	A1+	100%	74%	Meets policy
A+ to A-	A1	60%	25%	Meets policy
BBB to NR	A2,NR	40%	1%	Meets policy

NSW Treasury Corporation Compliance – Loan Borrowing Conditions

- 20 Council has borrowed loans through NSW Treasury Corporation under the Local Government Low Cost Loans Initiative. As part of these loan borrowings, NSW Treasury Corporation has placed restrictions on where Council can invest based on the credit rating of the financial institution, the term of the investment and counterparty limit.

NSW Treasury Corporation has reviewed Council's Investment Portfolio and reminded Council it needs to remain within the investment parameters outlined in the accepted loan

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agreements. Council currently complies with T Corp Borrowing conditions as indicated in the table below:

Tcorp compliance			Counterparty Limit	Tenor	ACTUAL	Variance
% should not exceed the following						
Tcorp	100%	100%	100%	N/A	0%	Meets policy
AAA	100%	100%	100%	N/A	6%	Meets policy
AA+ to AA-	100%	100%	100%	5Y	64%	Meets policy
A+ to A	100%	100%	100%	3Y	29%	Meets policy
A-	40%	40%	40%	3Y	0%	Meets policy
BBB+	30%	10% 3 Years	3Y	3Y	0%	Meets policy
BBB		5% 12 Months	1Y	1Y	1%	Meets policy
BBB- and below (local ADI'S)	5%	5% 12 Months	1Y	1Y	0%	Meets policy
BBB- and below (other)		250,000	1Y	1Y	0%	Meets policy

- 5 Council had discussions with NSW Treasury Corporation and indicated it would start reporting the compliance in the monthly investment report to Council. Council is able to hold existing investments not in compliance until maturity but must ensure new investments meet the compliance requirements.

- 10 Meeting the NSW Treasury Corporation compliance means Council will be limited in taking up investments that may be for purposes associated with Environmental and Socially Responsible outcomes. Investments which do not comply with NSW Treasury Corporation requirements and investments with financial institutions that do not support fossil fuels will have to be decreased due to their credit rating status or lack of credit rating.

The investment portfolio is outlined in the table below by investment type for the period 1 May 2022 to 31 May 2022:

15 Dissection of Council Investment Portfolio as at 31 May 2022

Principal Value (\$)	Investment Linked to:	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
25,000,000.00	Term Deposits	25,000,000.00	0.00
1,500,000.00	Floating Rate Note	1,505,935.00	5,935.00
21,810,689.25	CBA Business Saver	21,810,689.25	0.00
5,942,985.59	CBA Business Saver – Tourism Infrastructure Grant	5,942,985.59	0.00
18,049,791.51	Macquarie Accelerator	18,049,791.51	0.00
5,500,000.00	Bonds	5,203,040.00	(296,960.00)
77,803,466.35		77,512,441.35	(291,025.00)

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Council's overall 'cash position' is not only measured by funds invested but also by the funds retained in its consolidated fund or bank account for operational purposes. The table below identifies Council's overall cash position for the month of May 2022 as follows:

Dissection of Council's Cash Position as at 31 May 2022

Item	Principal Value (\$)	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
Investments Portfolio			
Term Deposits	25,000,000.00	25,000,000.00	0.00
Floating Rate Note	1,500,000.00	1,505,935.00	5,935.00
CBA Business Saver	21,810,689.25	21,810,689.25	0.00
CBA Business Saver – Tourism Infrastructure Grant	5,942,985.59	5,942,985.59	0.00
Macquarie Accelerator	18,049,791.51	18,049,791.51	0.00
Bonds	5,500,000.00	5,203,040.00	(296,960.00)
Total Investment Portfolio	77,803,466.35	77,512,441.35	(291,025.00)
Cash at Bank			
Consolidated Fund	3,485,873.77	3,485,873.77	0.00
Total Cash at Bank	3,485,873.77	3,485,873.77	0.00
Total Cash Position	81,289,340.12	80,998,315.12	(291,025.00)

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
Community Objective 5: We have community led decision making which is open and inclusive	5.5: Manage Council's finances sustainably	5.5.2: Ensure the financial integrity and sustainability of Council through effective planning and reporting systems (SP)	5.5.2.5	Manage treasury functions of Council to maintain cash flow and maximise return on invested funds
Community Objective 5: We have community led decision making which is open and inclusive	5.5: Manage Council's finances sustainably	5.5.2: Ensure the financial integrity and sustainability of Council through effective planning and reporting systems (SP)	5.5.2.6	Identification of ethical investment opportunities with environmental and social inclusion outcomes

Legal/Statutory/Policy Considerations

- 5 In accordance with Section 212 of the *Local Government (General) Regulation 2021*, the Responsible Accounting Officer of Council must provide Council with a monthly report detailing all monies it has invested under section 625 of the *Local Government Act 1993*.

- 10 The Report must be presented at the next Ordinary Meeting of Council after the end of the month being reported. The current Council Meeting cycle does not always allow this to occur, especially as investment valuations required for the preparation of the report are often received after the deadline for the submission of reports. Endeavours are being made to achieve a better alignment and for some months this will require reporting for one or more months.

- 15 Council's investments are made in accordance with section 625(2) of the *Local Government Act 1993* and Council's Investment Policy. The *Local Government Act 1993* allows Council to invest money as per the Minister's Order – Forms of Investment, last published in the Government Gazette on 11 March 2011.

Council's Investment Policy includes the objective of maximising earnings from authorised investments and ensuring the security of Council Funds.

Financial Considerations

- 20 Council uses a diversified mix of investments to achieve short, medium, and long-term results.

Report No. 13.9 Review of Council Delegations

Directorate: Corporate and Community Services

Report Author: Mila Jones, Governance and Internal Audit Coordinator

File No: I2022/658

5 **Summary:**

Council is required to review its delegations within the first 12 months of an election. Council may, by resolution, delegate to the General Manager any Council function other than the matters specifically set out in section 377 of the Local Government Act 1993.




10

RECOMMENDATION:

1. That Council revokes its previous delegations to the Mayor and General Manager and adopts the following:
 - 15 a) Instrument of Delegation to the Mayor shown at Attachment 1 (E2021/140718); and
 - b) Instrument of Delegation to the General Manager at Attachment 2 (E2021/140618).
- 20 2. That Council reconfirms that it delegates its functions as a Local Control Authority for noxious weeds under s370 of the Biosecurity Act 2015 to Rous County Council until such time as the delegation is revoked or re-delegated.
3. That Council reconfirms its delegations to Council's Special Purposes Committee, i.e., the Planning Review Committee, as set out in Council's Code of Meeting Practice at clause 21.
- 25 4. That Council reconfirms its acceptance of delegation of functions from other agencies as set out at Attachment 3 (E2021/140789).
5. That Council notes that Delegations of Authority for Council's Section 355 Committees is the subject of a separate report to Council.

Attachments:

30

- 1 Delegation of functions to the Mayor - for adoption following new term of Council, E2021/140718 
- 2 Delegation of functions to the General Manager - for adoption following new term of Council, E2021/140618 
- 35 3 Delegations accepted by Council (Food Act 2003, Plumbing and Drainage Act 2012) - for adoption following new term of Council, E2021/140789 

Report

Section 380 of the Local Government Act 1993 states that each council must review all its delegations during the first 12 months of each term of office. Council may, by resolution, delegate to the General Manager any Council function other than the matters specifically set out in section 377 of the Local Government Act 1993. These matters are included in the Statutory and Policy Implications section of this report.

Mayor

Council's current delegation to the Mayor was adopted on 23 April 2020 via Resolution **20-188**. The proposed change to this instrument is to remove the COVID-19 provision which is not applicable at this time. For reference, this provision is removed by track changes in the recommended instruction at Attachment 1. Further minor amendments have been made to formatting and wording to bring it in line with Council's Delegations Register. The intention of each delegation has not been affected.

General Manager

Council's current delegation to the General Manager was adopted on 2 August 2018 via Resolution **18-489**. Other than minor formatting and minor wording changes to bring it in line with Council's Delegations Register, there is one proposed change to this instrument. This change amends the delegation relating to applications under Part 4 of the Environmental Planning and Assessment Act 1979 (DEG088e). The amendment reduces the number of subdivision lots from "20 or more" to "10 or more" that the General Manager is delegated to determine*. Of the minor changes, the intention of each delegation has not been affected. The recommended instrument is included in this report as Attachment 2.

**Note: The Planning Review Committee guidelines will be updated to reflect the implication of the reduction of subdivision lots should the draft Instrument of Delegations to the General Manager be adopted.*

Rous County Council

Council adopted on 21 September 2017 via resolution **17-422** that Council "*reconfirm its delegation of its functions for noxious weeds under the Noxious Weeds Act, 1993, to Rous County Council until such time as the delegation is revoked or re-delegated.*"

It is proposed to reconfirm this delegation as amended at point 2 of the recommendation to this report, noting the reference to the repealed Noxious Weeds Act 1993 has been amended to reference its replacement, the [Biosecurity Act 2015](#).

Special Purpose Committee endorsed under Council's Code of Meeting Practice

Council's Planning Review Committee is a Special Purpose Committee which is endorsed under Council's Code of Meeting Practice. The delegation to this Committee is shown at [clause 21](#) of the Code.

It is proposed to reconfirm this delegation until such time as the delegation is revoked or re-delegated.

Acceptance of delegation of functions from other agencies

5 Pursuant to s381 of the Local Government Act 1993, and by every other Act conferring a power of delegation, Council reconfirmed at the Ordinary Meeting on 21 September 2017 its acceptance of functions and powers to Council. It is proposed to reconfirm acceptance of these functions and powers shown at Attachment 3 except for the delegation under the Environmental Planning and Assessment Act 1979 as it is no longer applicable. The updated s59 (now [s3.36](#)) of that Act has since been amended to reference the “local plan-making authority” (Council) rather than “the Minister”.

Strategic Considerations

10 Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
Community Objective 5: We have community led decision making which is open and inclusive	5.2: Create a culture of trust with the community by being open, genuine and transparent	5.2.3: Provide access to publicly available corporate registers	5.2.3.1	Maintain, publish and report on relevant registers including delegations, Councillors and designated staff disclosures of interests, Councillor and staff gifts and benefits, and staff secondary employment.

Recent Resolutions

22-018 – [Extraordinary Meeting held 3 February 2022](#)

Legal/Statutory/Policy Considerations

15 The Local Government Act 1993 establishes the statutory framework for the delegation of Council’s authority.

Local Government Act 1993 - Part 3 Delegation of functions

377 General power of the council to delegate

- 20 (1) A council may, by resolution, delegate to the general manager or any other person or body (not including another employee of the council) any of the functions of the council under this or any other Act, other than the following—
- (a) the appointment of a general manager,
 - (b) the making of a rate,
 - (c) a determination under section 549 as to the levying of a rate,
 - (d) the making of a charge,
 - 25 (e) the fixing of a fee,

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- 5 (f) the borrowing of money,
- (g) the voting of money for expenditure on its works, services or operations,
- (h) the compulsory acquisition, purchase, sale, exchange or surrender of any land or other property (but not including the sale of items of plant or equipment),
- (i) the acceptance of tenders to provide services currently provided by members of staff of the council,
- (j) the adoption of an operational plan under section 405,
- 10 (k) the adoption of a financial statement included in an annual financial report,
- (l) a decision to classify or reclassify public land under Division 1 of Part 2 of Chapter 6,
- (m) the fixing of an amount or rate for the carrying out by the council of work on private land,
- 15 (n) the decision to carry out work on private land for an amount that is less than the amount or rate fixed by the council for the carrying out of any such work,
- (o) the review of a determination made by the council, and not by a delegate of the council, of an application for approval or an application that may be reviewed under section 82A of the Environmental Planning and
- 20 Assessment Act 1979,
- (p) the power of the council to authorise the use of reasonable force for the purpose of gaining entry to premises under section 194,
- (q) a decision under section 356 to contribute money or otherwise grant financial assistance to persons,
- 25 (r) a decision under section 234 to grant leave of absence to the holder of a civic office,
- (s) the making of an application, or the giving of a notice, to the Governor or Minister,
- (t) this power of delegation,
- 30 (u) any function under this or any other Act that is expressly required to be exercised by resolution of the council.

(1A) Despite subsection (1), a council may delegate its functions relating to the granting of financial assistance if—

- 35 (a) the financial assistance is part of a specified program, and
 - (b) the program is included in the council's draft operational plan for the year in which the financial assistance is proposed to be given, and
 - (c) the program's proposed budget for that year does not exceed 5 per cent of the council's proposed income from the ordinary rates levied for that year,
 - 40 and
 - (d) the program applies uniformly to all persons within the council's area or to a significant proportion of all the persons within the council's area.
- (2) A council may, by resolution, sub-delegate to the general manager or any other person or body (not including another employee of the council) any function delegated to the council by the Departmental Chief Executive except as provided by the instrument of delegation to the council.
- 45

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- (3) A council may delegate functions to a joint organisation only with the approval, by resolution, of the board of the joint organisation.

378 *Delegations by the general manager*

- 5 (1) The general manager may delegate any of the functions of the general manager, other than this power of delegation.
- (2) The general manager may sub-delegate a function delegated to the general manager by the council to any person or body (including another employee of the council).
- 10 (3) Subsection (2) extends to a function sub-delegated to the general manager by the council under section 377(2).

379 *Delegation of regulatory functions*

- (1) A regulatory function of a council under Chapter 7 must not be delegated or sub-delegated to a person or body other than—
- 15 (a) a committee of the council of which all the members are councillors or of which all the members are either councillors or employees of the council, or
- (b) an employee of the council, or
- (c) a county council, or
- (d) a joint organisation.
- 20 (2) A regulatory function of a county council under Chapter 7 must not be delegated or sub-delegated to a person or body other than—
- (a) a committee of the county council of which all the members are members of the county council or of which all the members are either members of the county council or employees of the county council, or
- 25 (b) an employee of the county council, or
- (c) a council.
- (2A) A council may delegate a regulatory function to a joint organisation only with the approval, by resolution, of the board of the joint organisation.
- (3) However, if—
- 30 (a) a regulatory function is delegated to a county council, the function may be delegated to the general manager and by the general manager to an employee of the county council, or
- (b) a regulatory function is delegated to a council, the function may be delegated to the general manager and by the general manager to an employee of the council, or
- 35 (c) a regulatory function is delegated to a joint organisation the function may be delegated to the executive officer and by the executive officer to an employee of the joint organisation.

380 Review of delegations

Each council must review all its delegations during the first 12 months of each term of office.

381 Exercise of functions conferred or imposed on council employees under other Acts

- 5 (1) If, under any other Act, a function is conferred or imposed on an employee of a council or on the mayor or a councillor of a council, otherwise than by delegation in accordance with this section, the function is taken to be conferred or imposed on the council.
- (2) Such a function may be delegated by the council in accordance with this Part.
- 10 (3) A person must not, under any other Act, delegate a function to—
- the general manager, except with the approval of the council
 - an employee of the council, except with the approval of the council and the general manager.

Financial Considerations

- 15 Nil.

Consultation and Engagement

Consultation with Councillors was via the initial report to Council on 3 February 2022 and discussion at the Strategic Planning Workshop on 2 June 2022.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

**Report No. 13.10 PLANNING - Development Application
10.2020.458.1 Demolition of existing
structures and construction of a mixed use
development comprising of a specialised
retail premises, business premises and two
(2) shop top housing dwellings**

Directorate: Sustainable Environment and Economy

Report Author: Ivan Holland, Planner

File No: I2022/519

Proposal:

DA No: 10.2020.458.1

Proposal description: Demolition of Existing Structures and Construction of a Mixed-Use Development Comprising of a Specialised Retail Premises, Business Premises and Two (2) Shop Top Housing Dwellings

Property description: LOT: 2 DP: 853493
7 Tweed Street BRUNSWICK HEADS

Parcel No/s: 205320

Applicant: Newton Denny Chapelle

Owner: Commercial Seating Solutions Pty Ltd

Zoning: B4 Mixed Use

Date received: 15 September 2020

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**Integrated /
Designated
Development:**

☐ Integrated

☐ Designated

☒ Not applicable

**Concurrence
required**

No

**Public
notification or
exhibition:**

Original proposal

- Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
- Exhibition period: 1/10/20 to 14/10/20
- Submissions received: twenty-four (24)

Amended proposal

- Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
- Exhibition period: 21/9/21 to 4/10/21
- Submissions received: three (3)
- Submissions acknowledged: ☒ Yes ☐ No ☐ N/A

**Planning
Review
Committee:**

17 March 2022

**Delegation to
determine**

Council

Issues:

- Basement car park proposed for Brunswick Heads
- Some modifications required to meet landscaping, design, floor space ratio and character requirements
- Submissions in opposition

Summary:

This original application sought approval for Demolition of Existing Structures and Construction of a Mixed-Use Development Comprising of a Specialised Retail Premises, Business Premises and Two (2) Shop Top Housing Dwellings.

- 5 Following exhibition and matters raised by staff, the application was amended with minor alterations to the layout of basement, ground floor and upper floor (units 1 & 2), and with changes is to the external appearance of the development particularly:
- gable roofs rather than skillion as initially proposed; and
 - changes to materials including use of timber battens for balustrades and screens,
- 10 stone cladding of block retaining walls, weatherboard cladding and timber posts & beams.

The application seeks approval for a basement car park which enters the site from Veterans Lane near ground level and ultimately relates to an excavation of around 2 meters due to the topography of the site.

- 15 The application appropriately addresses the relevant constraints applying to the site and is recommended for approval subject to the conditions listed in the Recommendation of this Report below.

NOTE TO COUNCILLORS:






- 20 In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have been called by the mover and seconder of all motions relating to this report.

25

RECOMMENDATION:

- 30 **That, pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2020.458.1 for demolition of existing structures and construction of a mixed-use development comprising of a specialised retail premises, business premises and two (2) shop top housing dwellings, be granted consent subject to the recommend conditions of approval in Attachment 6 (#E2022/45336).**

Attachments:

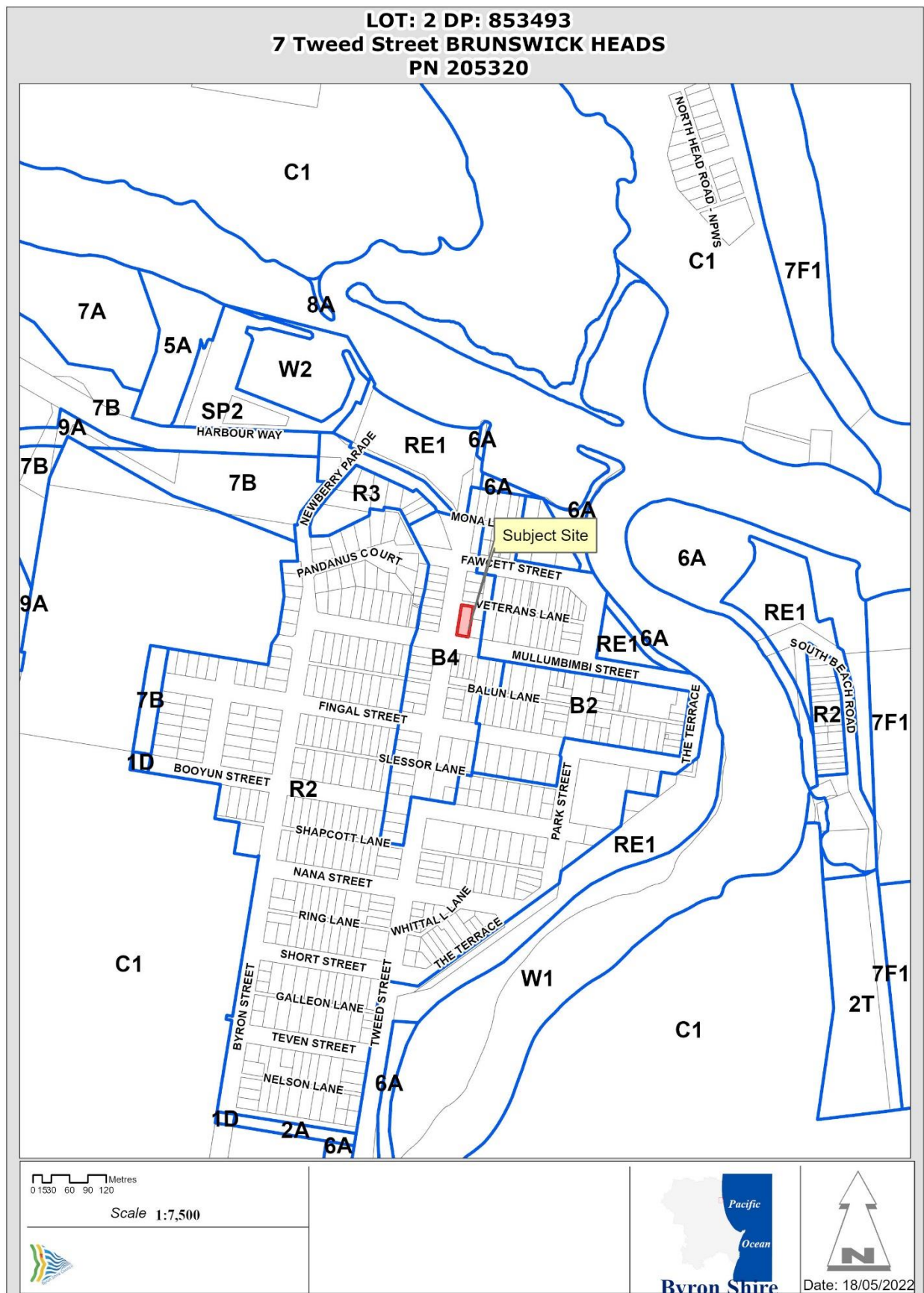
- 35 1 DA10.2020.458.1 - Original Plans, E2020/74691 
- 2 DA 10.2020.458.1 - Combined, redacted submissions on original application, E2020/86602 
- 3 DA 10.2020.458.1 - Design Plans as amended for Approval, E2021/115056 
- 4 DA 10.2020.458.1 - Combined, redacted submissions on amended plans, E2022/45799 
- 40 5 DA 10.2020.458.1 - Public art planning agreement offer, E2022/53082 

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6 DA 10.2020.458.1 - Recommended conditions, E2022/45336 



Assessment:

1. INTRODUCTION

1.1. History/Background

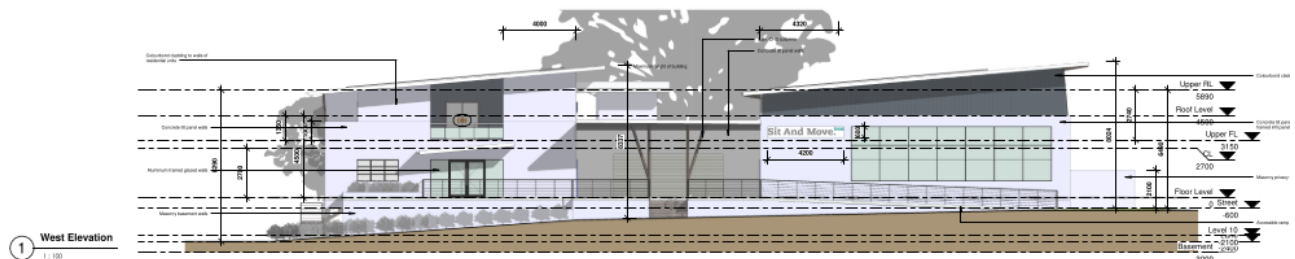
Property development history

5 Council's records indicate the following development approval history for the property:

- 5.1998.165.1 – DA change of use (Motor Showroom) – approved 9/7/1998
- 10.2001.20.1 – DA change of use – commercial development – fruit & vegetable shop) – approved 10/7/2001
- 10.2003.160.1 – DA construction of double carport – approved 1/5/2003

10 Development application processing history

The proposed development originally was designed with large skillion roofs, plate glass windows/walls and had a lack of consideration for the DCP planning controls for Brunswick Heads



15 **Tweed Street Elevation – Original Plans**

The plans were exhibited, and a number of objections were received. Further information was requested in terms of plans, contamination, earthworks, groundwater and acid sulfate soils. Following discussions with the applicant amended plans and details were submitted on 9/9/21. The response included amended design plans with the following key changes:

- 20 • Re-configuration to the residential units to allow additional street appeal for the northwest corner of the building and reduced bulkiness by adding a corner balcony.
- Altered roof design to reflect a more house like appearance: from skillion roof to a hip roof.
- 25 • Revised elevations to break-up the bulkiness of the walls and reduce the impact on the street.
- Extensive use of timbers, stone walls and weatherboard cladding to add warmth and texture to the facades.
- Additional planter boxes to soften the impact on the street.
- 30 • The ground floor southwest corner has been rounded off to open a line of site to the Church across the road. This has allowed more planting and softening of the

building. A timber pergola structure has been added to the West elevation to reduce the impact of the two-storey walls. This structure adds shadowing and shading to the West of the building and takes the focus of the size of the overall building.

5 The amended design plans were re-notified and exhibited from 21/9/21 to 4/10/21 with three further objections being received.

1.2. Description of the proposed development

This original application sought approval for Demolition of Existing Structures and Construction of a Mixed-Use Development Comprising of a Specialised Retail Premises, Business Premises and Two (2) Shop Top Housing Dwellings.



Figure 1. 3-D render of amended development proposal showing external finishes.

The amended application seeks approval for the same development being, Demolition of Existing Structures and Construction of a Mixed-Use Development Comprising of a Specialised Retail Premises, Business Premises and Two (2) Shop Top Housing Dwellings. The amended plans have some minor changes to layout of basement, ground floor and upper floor (units 1 & 2) however the key change is to the external appearance of the development particularly:

- gable roofs rather than skillion as initially proposed; and
- changes to materials including use of timber battens for balustrades and screens, stone cladding of block walls, weatherboard cladding and timber posts & beams.

1.3. Description of the site



Figure 2. Aerial photo with land zoning overlay. Subject property identified by yellow polygon.

Land is legally described	LOT: 2 DP: 853493
Property address	7 Tweed Street BRUNSWICK HEADS
Land is zoned:	B4 Mixed Use
Land area is:	1011 m ²
Property is constrained by:	<ul style="list-style-type: none"> • Flood Liable Land • Acid Sulfate Soils Class 4 • Overhead powerlines • Stormwater pipe and inlet along northern boundary • Contaminated land

5 A site inspection was carried out on 21 October 2020.

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Photo 1 – subject site, view northeast from Tweed Street/Mullumbimbi Street corner



Photo 2 – subject site, view north from Mullumbimbi Street



Photo 3 – subject site, view southeast from Veterans Lane



Photo 4 – subject site, view southeast from Tweed Street/Veterans Lane corner



Photo 5 – subject site, view east from Tweed Street



Photo 6 – 'Our Lady of Lourdes' Catholic Church

2. SUMMARY OF REFERRALS

Referral	Issue
Environmental Health Officer	No objections subject to conditions.
Development Engineer	No objections subject to conditions.
S64 / Systems Planning Officer	No objections subject to conditions.
S7.11 / Contributions Officer	No objections subject to conditions

3. SECTION 4.14 – BUSH FIRE PRONE LAND

- 5 Under section 4.14 of the Act, Council must be satisfied prior to making a determination for development on bush fire prone land, that the development complies with the document '*Planning for Bush Fire Protection 2019*'. The site is not bush fire prone land.

4. SECTION 4.15C – MATTERS FOR CONSIDERATION – DISCUSSION OF ISSUES

Having regard to the matters for consideration detailed in Section 4.15(1) of the Environmental Planning & Assessment Act 1979 (EP&A Act), the following is a summary of the evaluation of the issues.

4.1 State Environmental Planning Instruments

	Satisfactory	Unsatisfactory
<u>State Environmental Planning Policy (Biodiversity and Conservation) 2021</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The subject property is within the Koala Planning Area under the Byron Coast Comprehensive Koala Plan of Management (BCKPoM) however the property is less than 1ha and does not contain any Koala habitat. Approval of this development application will be consistent with the BCKPoM as required (cl.4.8(2)).		
<u>State Environmental Planning Policy (Resilience and Hazards) 2021</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: Council's Environmental Health Officer has reviewed the preliminary contamination investigation for the site and concluded that <i>"adequate environmental treatments have been proposed by the applicant to manage soil and water contamination that may be encountered during demolition works and construction of the development. To ensure that relevant statutory requirements are upheld consent conditions have been recommended"</i> (cl.4.6). The subject property is mapped as coastal environment area and coastal use area. The proposed development is in a developed area of Brunswick Heads and is unlikely to adversely impact on the listed matters (cl.2.10, 2.11).		
<u>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The dwellings are BASIX affected development and a BASIX Certificate was provided with the application.		
<u>State Environmental Planning Policy (Transport and Infrastructure) 2021</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: Due to proximity of the proposed development to power infrastructure in the road reserve, the application was referred to Essential Energy (cl.45/2.48). The applicant provided an electrical clearance assessment and conditions of consent to apply to ensure final construction certificate plans are to the satisfaction of Essential Energy prior to the CC being issued.		

4.2A Byron Local Environmental Plan 2014 (LEP 2014)

In accordance with LEP 2014 clauses 1.4 and 2.1 – 2.3:

- (a) The proposed development is defined in the LEP 2014 Dictionary as demolition, retail premises, business premises, shop top housing;
- 5 (b) The land is within the B4 Mixed Use according to the Land Zoning Map;
- (c) The proposed development is permitted with consent; and
- (d) Regard is had for the Zone Objectives as follows:

Zone Objective (B4)	Consideration
<ul style="list-style-type: none"> • To provide a mixture of compatible land uses. • To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling. 	<p>The proposed development provides a mixture of compatible uses (being retail, business and residential) in an accessible location (being on Tweed Street, the main thoroughfare through Brunswick Heads).</p>

4.3 Height of buildings

- 10 The application states that the maximum building height above existing ground level is 8.337m being below the building height limit of 9m. The maximum building height is not clearly annotated on any of the plans provided however based on a review of the east & west elevations, the maximum building height will be ~8.8m above existing ground level.

4.4 Floor space ratio

- 15 The floor space ratio (FSR) for the development is 0.498:1 being below the FSR limit of 0.5:1. To ensure compliance with the FSR and to prevent the courtyard becoming floor space, an amendment of the plans to remove the full height timber screening of the courtyard in relation to the Tweed Street frontage has been required by a recommended condition. The applicant argues that the courtyard screening is necessary and does not contribute to FSR as follows:
- 20 With respect to the 'enclosure of the ground floor courtyards, my client needs to be able to secure this area at night time to avoid people congregating and sleeping there. The proposed sliding open timber louvre doors retain the area as 'outdoor' space (rather than 'indoor') and was proposed as an attractive design solution which enabled the area to be open in the day but secure after hours. With respect to GFA/FSR considerations, the Court has held that where
- 25 the structure enclosing the space is open to the weather (which is clearly the case in this instance) the floor area does not form part of the GFA/ FSR. (*MGT 6 Pty Ltd v The Council of the City of Sydney [2017]*). In this case, the Commissioner advised "I do not accept the Council's submission that the spaced open battens in this proposal in the foyer area or the

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landings (at a reduced height) are enclosed walls for the purposes of the particular definition in the LEP because they are open to the weather". Various other cases also reach this conclusion (Primo Developments Sydney Pty Ltd v Woollahra Municipal Council [2019] etc). The more recent C & J corporation Pty Ltd v Canterbury-Bankstown Council [2020] does not alter this position. Court judgements are always 'rabbit holes' of complexity, however if we're not building a weathertight 'wall' to the western façade, I find it difficult to agree that the courtyard are to be counted in the GFA / FSR calcs. I look forward to discussing this matter more specifically with you to ascertain a solution which may be satisfactory to both Council and my client.

and

Issue 2 - Timber Batten Screening

With respect to the proposed timber batten screening to the courtyard areas, my client and the project architect are strongly of the view that the screening as proposed provides for a quality (non-industrial) building aesthetic, which retains the western elevation as open and visually permeable. Importantly, it also enables the courtyard areas to be secure at night time preventing people from congregating (and sleeping) within the courtyards. The screening is not weather tight and therefore does not comprise a 'wall' of the building. As such, the courtyard areas are not to be considered Gross Floor Area (GFA) nor contribute to the Floor Space Ratio (FSR) calculations. Given the above, no further changes are proposed to this element of the design.

Notwithstanding it is staff view the open courtyard and the closed courtyard are a contiguous space. Terraces and balconies with outer walls less than 1.4 metres high may be excluded from gross floor area and FSR calculations but otherwise are to be included. As such, a full height screen of the courtyard makes this space gross floor area and is required to be included in FSR calculation. It is considered the condition recommending the removal of the full height screen is justified in this instance.

6.1 Acid sulfate soils

Council's Environmental Health Officer has reviewed the Acid Sulfate Soils Management Plan (ENV Solutions, 16/03/2022) provided by the applicant and is satisfied the plan demonstrates that adequate measures can be employed to manage disturbance of acid sulfate soils. Acid laden ground waters is expected to be generated through interception of the water table by excavation for the basement. Dewatering works including pH correction will be managed by implementing measures outlined in Dewatering Management Plan (ENV Solutions, 16/03/2022). The volume of groundwater to be extracted is anticipated to be greater than 3ML per year requiring a supply works approval and water allocation licence under the Water Management Act. Recommended conditions address the matters outlined above.

6.2 Earthworks

Council's Development Engineer is satisfied the earthworks and stormwater during construction can be adequately managed subject to conditions.

6.3 Flood planning (now cl.5.21)

- 5 The minimum floor level is 3.42 m AHD, and the proposed ground floor is set at 4.10m AHD. The basement however is located below the minimum floor level and as such would be subject to flooding in the event of 1:100 year flood event with water accessing the basement from Veterans Lane which has a height of 2.1 m AHD. The applicants have proposed an automatic flood gate at the entrance to basement which would raise to 3.42 m AHD to prevent flood water ingress. Conditions to apply

6.6 Essential services

- 10 Council's Development Engineer is satisfied the amended development can be adequately serviced (including stormwater management and suitable vehicular access), when required, subject to recommended conditions.

6.7 Affordable housing in residential and business zones

- 15 This clause applies to the development as the property is within zone B4 Mixed Use and includes residential accommodation.
- 20 This clause requires that prior to granting consent to development on land zoned B4 Mixed Use, the consent has considered— the need for providing, maintaining, or retaining affordable housing, and the need for imposing conditions relating to providing, maintaining, or retaining affordable housing including, but not limited to, imposing covenants and the registration of restrictions about users.
- 25 While the proposal does not provide for affordable housing as defined by the clause, it instead seeks to respond to this clause through provision of new supply and diversity of housing stock in the town centre. It is understood that the two shop top dwellings will be offered for purchase and or long-term rental over short term holiday letting. To ensure this outcome, a condition on the use of dwellings to preclude holiday letting of the residential apartments is included in the recommended consent.
- 30 Without an appropriate legislative mechanism in place, council is unable to require anything further of a proponent at this time. To this aim, staff are reviewing this clause to encompass wording in line with the on exhibition [Affordable Housing Contribution Scheme - Byron Shire Council \(nsw.gov.au\)](https://www.nsw.gov.au/affordable-housing-contribution-scheme) to provide greater guidance on the application of Byron LEP 2014 - Clause 6.7.

4.3 Any proposed Instrument that has been the subject of public consultation and has been notified to the consent authority

No draft environmental planning instruments were identified that are relevant to this application.

4.4A Byron Shire Development Control Plan 2014 (DCP 2014)

B3: Services

- 5 Council's Development Engineer is satisfied the amended development can be adequately serviced in relation to construction and developed stormwater management, subject to recommended conditions.

B4: Traffic Planning, Vehicle Parking, Circulation and Access

- The development generates a need for 2 residential spaces and 17 commercial parking spaces. The proposal provides for a total of 23 spaces and complies with the minimum car parking requirements.
- 10 In terms of traffic impacts, the development requires access from Veterans Lane which is already sealed. The development however also requires the widening of Veterans Lane from the Tweed Street intersection to the eastern boundary of the property. Conditions to apply.

B5: Providing for Cycling

- 15 The amended development includes two designated areas for lockable cycle parking in the basement which will be useful for the residents of the shop top housing and employees of the commercial tenancies.

B9: Landscaping

- 20 The amended development proposal includes a concept Landscape Plan. The Landscape Plan is generally consistent with the General Landscaping Principles (B9.3). Based on the Landscape Plan, over 10% of the site will be dedicated to landscaping (B9.7).

- 25 The Landscape Plan does not appear to include a consideration of street trees which are considered appropriate based on the scale and location of the proposed development (B9.11). A condition requiring an updated landscaping plan be provided with the construction certificate application to address the matters above including street trees to Tweed Street has been recommended.

B10: Signage

The application seeks approval for three signage panels as follows:

- 30
- 1 sign on the south elevation (building identification, 0.996x7m, 6.942m² in area, no illumination); and
 - 2 signs on the west elevation (business identification, 0.6x4.2m, 2.52m² in area, no illumination).

- 35 The application states that the signage will be fully integrated with, and fixed to, the building. Thorough assessment of the proposed signs could not be carried out as insufficient information was provided such as (B10.2.1 and B10.3.3):

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- full colour scheme, wording and/or graphics drawn to an appropriate and clearly identified scale;
- identification of location of signs on the site plan; and
- illustration of signs on elevations;

- 5 Due to the lack of detail and as signage consents are required to expire within 15 years (B10.2.2.) it is recommended that approval for signs not be granted under this consent and the applicant be required to lodge a separate development application for signage for the development.

B11: Planning for Crime Prevention

- 10 The application involves several features to promote crime prevention being:
- substantial windows for street level commercial uses;
 - construction using durable materials that can be readily painted to remove graffiti; and
 - ability to secure central courtyard and basement parking area after hours (B11.2.2).
- 15 The crime prevention design measures can be better enhanced by:
- reducing the screening along the lower level frontage to Tweed Street;
 - preventing access to the rear of the site through fencing/lockable gates;
 - providing further lighting for entrances and car parking areas; and
 - ensure landscaping does not conceal entrances.
- 20 A condition has been recommended requiring amended plans to incorporate these measures.

B13: Access and Mobility

- 25 The development proposes two shop top housing dwellings neither of which are adaptable housing. The control requires a minimum of 10% of dwellings to be adaptable (B13.2.2 and B13.2.4). Based on only two dwellings a variation to not enforce this provision is supported

B14: Earthworks

- 30 Earthworks during construction can be adequately managed subject to conditions. The earthworks relate to the basement carpark and will be hidden by the upper levels of the development this minimising any visual impacts from the earthworks (B14.2).

C1: Non-Indigenous Heritage

- 35 The proposed development is within the vicinity (~35m from and on the opposite side of Mullumbimbi Street) of the 'Our Lady of Lourdes' Catholic Church heritage item located at 50 Mullumbimbi Street. The impact of the development on the heritage character has been minimised through amendments to the building design, building setback over 5.5m from the southern boundary and some landscaping within the southern setback (C1.3). The proposed development is consistent with specific heritage requirements as it will not

hinder views of, or overshadow, the heritage item and underground parking access/egress will not be visible from the heritage item (C1.5).

C2: Areas Affected by Flood

- 5 See consideration under clause 6.3 of LEP 2014 above. The proposal raises no issues pertaining to flood.

D1: Residential Accommodation in Urban, Village and Special Purpose Zones

D1.10 Shop Top Housing

- 10 The proposed development complies with the density controls with greater than 25% of floor space allocated to commercial use development, a separate isolated access to the dwellings provided, private open space balconies greater than 15m² in area and north facing, sound proofing is satisfactory as no bedrooms in dwellings do not share walls and each dwelling has a small laundry within which a dryer can be located, plus courtyard area is available for traditional clothes drying to the sun. Conditions to apply in relation to site facilities.

15 D4: Commercial and Retail Development

- 20 The proposed development is not contrary to the relevant performance criteria relating to design, character and appearance (D4.2.1 and D4.2.2). Whilst the loading docks may comply with the relevant provisions of Chapter B4, they will be visible from Tweed Street and Mullumbimbi Street due to minimal setbacks and landscaping (D4.2.4 and D4.2.5).
The landscaping bays between the loading bays and Mullumbimbi Street are ~1m in width being less than the 3m required.

D8: Public Art

- 25 The application did not include provision of public art or a Public Art Plan. In lieu of providing public art, the applicant has offered to enter into a voluntary planning agreement to provide an equivalent financial contribution for the installation of public art in a suitable location (D8.2.1). Council's Contributions Officer has reviewed the planning agreement offer and has recommended appropriate conditions for the agreement to be finalised prior to the issue of the construction certificate.

E4: Brunswick Heads (Tweed Street Masterplan)

- 30 In relation to the residential character narrative, the subject property falls within Pocket A which includes the Brunswick Heads village and surrounding residential areas (E4.2). In general terms, the community "... does not want to see the character of the older original village area eroded by unsympathetic new development". Relevant character statements for Pocket A include:
- 35
- Most buildings are set back from the street and have established, landscaped gardens enclosed by variable height low set front fences.
 - The streets and character "...lend to a relaxed, walkable and spacious feel".

- *Fisherman's cottages and residential watch towers provide a legacy from the past. The various styles and blend of external materials including fibro, rendered brick and weatherboard.*
- *Existing homes and new development in this area will need to maintain a consistency with the domestic scale, rhythm and defining features of existing houses.*
- *Large buildings typical of the 1970's flat development and cubist forms are inappropriate where they do not exhibit details appropriate to the existing mix of predominantly small scale traditional dwellings.*

For Tweed Street in particular, "Developments should connect with the street and look beyond just the basic provision of housing and transport aspects of Tweed Street to focus on the ways to creating an inviting, interesting and memorable vista:

- *through the retention of low set pitched roof housing*
- *use of verandahs, porches and vertical windows and doors addressing the street*
- *pockets of parking interspersed with paths, open space, seating and vegetation to encourage walkability and a slowing of vehicles*
- *well blended planting of local indigenous trees and vegetation to create a visual connection to the estuaries and wetlands as well shade, shelter and ecological benefits.*

Consideration of the amended proposal in relation to the character provisions shows that:

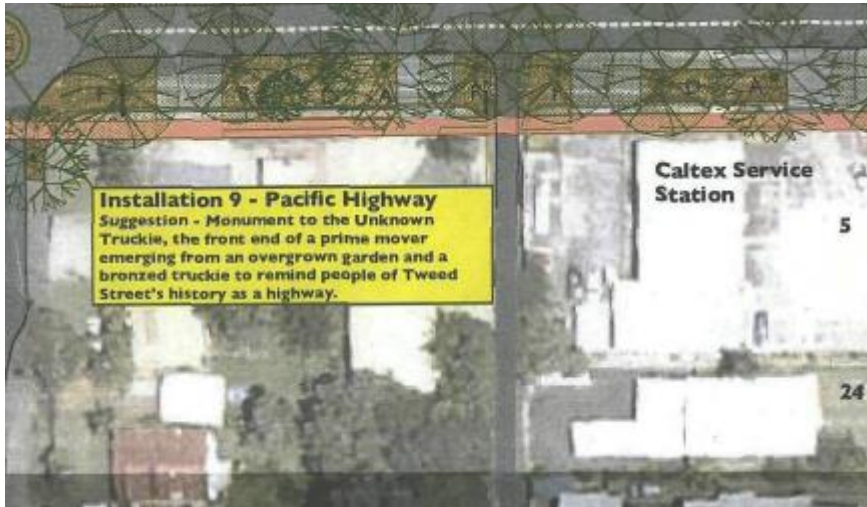
- The building is limited to two storeys above ground level which is not out-of-character with several neighbouring buildings;
- 'Splitting' of the development into two buildings separated by a courtyard reduces the bulk and scale when viewed from Tweed Street;
- Building setbacks to Mullumbimbi Street (~5.7m) and Veterans Lane (3m) are reasonable however the setback to Tweed Street is limited at ~1.3m preventing landscaping of almost half of this façade and relying on the road reserve to maintain the 'spacious feel' (E4.3.1);
- The buildings have low-pitched, gable roofs; and
- The weatherboard cladding of the upper floor is consistent with the character statement however the lower level would better suit the character narrative if clad/finished fully or partially with rendered brick;
- The narrow, raw timber battens proposed do not appear to have any context. However, wider, painted battens are common for underfloor screening of dwellings in Tweed Street.

A condition has been recommended requiring amended plans that propose finishes and material more consistent with character provisions.

The development also needs to be consistent with the Tweed Street Masterplan (E4.3.2) which identifies the planting of street trees (also identified above under landscaping). The planting identified in the masterplan for the subject property is detailed in Figure 3 below.

It is noted the provisions contained with Chapter E4 preventing basement car parks relates specifically to the **B2 Zone** and not the B4 Zone which this site is zoned. The provisions state under E4.3.1(d):

No excavated parking basements will be permitted, and additional vehicle footpath crossings will be discouraged in the B2 zone.



5 **Figure 3. Proposed treatment of Tweed Street frontage of subject site – Tweed Street Masterplan.**

(NB. The Unknown Truckie monument as nominated in the masterplan as a suggestion is probably no longer relevant considering the length of time that has elapsed between when the highway was closed and now)

4.5 Environmental Planning & Assessment Regulation 2000 Considerations

Clause	This control is applicable to the proposal:	I have considered this control as it relates to the proposal:	If this control is applicable, does the proposal comply?
92	Yes	Yes	Standard condition requiring demolition to be carried out in accordance with the relevant Australian Standard has been recommended.
93	No	N/A	N/A
94	No	N/A	N/A
94A	No	N/A	N/A

4.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

Impact on:	Likely significant impact/s?
Natural environment	No. The proposal will not have a significantly adverse impact on the natural environment of the locality.
Built environment	No. The proposal will not have a significantly adverse impact on the built environment of the locality.
Social Environment	No. The proposal will not have a significant social impact on the locality.
Economic impact	No. The proposal will not have a significant economic impact on the locality.
Construction Impacts	The development will generate minor impacts during its construction. Conditions of consent recommended to control hours of work, builders waste, construction noise, installation of sedimentation and erosion control measures and the like to ameliorate such impacts.

4.7 The suitability of the site for the development

- 5 The site is serviced, has manageable constraints and is suitable for the proposed development.

4.8 Submissions made in accordance with this Act or the regulations

The development application was publicly exhibited

There were **twenty-four (24)** submissions made on the original development application:

- 10 Key issues raised in submissions on the original application are summarised and considered in the table below:

Key issues raised in submissions	Consideration
Impact on privacy and amenity of neighbouring property to the northeast from shop top housing balcony	<ul style="list-style-type: none"> The development is setback 3 to 4 metres from the eastern boundary. In terms of the residential shop top housing, the windows on the upper level are small highlight windows with limited opportunities for overlooking. The eastern façade of the deck is to be screened to 1.8m to prevent overlooking

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Key issues raised in submissions	Consideration
	of the dwelling to the east
Solar access impacts on property to the northwest	<ul style="list-style-type: none"> • Usual building height plane do not apply due to zoning of land as B4 with proposed building as discussed setback 3-4m from the eastern boundary (minimum residential setback in 0.9m). • The neighbouring property to the southeast of the development has no setback to the shared boundary. • Shadow diagrams were provided showing the neighbouring properties to the east will be shaded in winter only after midday. • Having regards to the B4 zoning this is considered acceptable
Building is inconsistent with character of Brunswick Heads	Original proposal was unacceptable. An amended proposal was submitted with an altered building design and character and is considered satisfactory.
Impacts on traffic from development – volume and safety, access to carpark from Veterans Lane	The assessment of traffic impacts was considered by Council's Development Engineer and found to be acceptable. Veterans Lane will need to be upgraded. Conditions to apply.
Lack of car parking	The proposed car parking was considered by Council's Development Engineer and found to meet Council requirements for the development
Opposition to basement carpark	Basement carparks are not contrary to the planning requirements for B4 zoned land in Brunswick Heads. It is noted they are discouraged in zone B2 under Byron DCP 2014 but not the B4 zone.
Likely flooding of basement carpark. Exacerbation of existing flooding issue in Veterans Lane	The flood impact assessment for the development was considered by Council's Development Engineer and found to be acceptable.

There were **three (3)** further submissions made on the amended development application:

Key issues raised in submissions on the amended application are summarised and considered in the table below:

Key issues raised in submissions	Consideration
<p>Building is inconsistent with character of Brunswick Heads.</p> <ul style="list-style-type: none"> • Redeeming features of the building's design (e.g., timber screening, pergola structure and balustrades) will be prevented from construction by National Construction Code • Minimal setback to Tweed Street 	<ul style="list-style-type: none"> • This is a construction certificate matter. Any major changes to the façade of the building would be expected to require re-assessment through a DA modification application. • Setback to Tweed Street is satisfactory considering the zoning.
Gross floor area/floor space ratio calculations – failure to include courtyards despite being enclosed	<p>This is discussed above under the LEP 2014 section.</p> <p>Floor space ratio is compliant provided front courtyard is left unenclosed. Conditions to apply</p>
Opposition to basement carpark	As discussed, Basement carparks are not contrary to the planning requirements for B4 zoned land in Brunswick Heads.
Likely flooding of basement carpark. Exacerbation of existing flooding issue in Veterans Lane	As discussed, the basement has sufficient flood immunity in accordance with Council's requirements
Impacts on traffic from development – volume and safety, access to carpark from Veterans Lane	As discussed, traffic impacts were found to be acceptable. Veterans Lane will need to be upgraded.

4.9 Public interest

- 5 The proposed development is unlikely to prejudice or compromise the public interest or create an undesirable precedent.

5. DEVELOPER CONTRIBUTIONS

5.1 Water & Sewer Levies

Water and Sewer contributions to apply.

10 5.2 Section 7.11 Contributions

Development contributions to apply.

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6.0 Disclosure of Political Donations and Gifts

Disclosure details	Response
Has a Disclosure Statement been received in relation to this application? If Yes, Provide Disclosure Statement register reference: 91.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

7.0 Conclusion

5 The proposed development is considered appropriate for the site having regards to the B4 Zoning and other planning controls that apply to the site. The application is recommended for approval subject to conditions of consent.

Report No. 13.11 Burringbar Talking Street Mullumbimby - Evaluation of the Trial

Directorate: Sustainable Environment and Economy

Report Author: Isabelle Hawton, Place Liaison Officer
Kristie Hughes, Place Liaison Officer

File No: I2022/151

Summary:

In 2020 Council was the successful recipient of a NSW Government Streets as Shared Spaces grant for the Talking Street Trial in Burringbar Street, Mullumbimby.

- 10 The Talking Street project was promoted by the Place Planning Collective as a priority from the Our Mullumbimby Masterplan.

Council has been working with a group of community and business members to trial various initiatives to make the street safer, more attractive and more people friendly.

- 15 This placemaking trial was the first of its kind in the Byron Shire, offering valuable insight into the role of tactical urbanism (low-cost, temporary changes to the built environment, intended to improve local neighbourhoods and gathering places) and the use of trials to explore potential outcomes for Council projects.

- 20 This report provides an overview of the elements installed as a part of the trial, how well they achieved their intended purpose, and the process to finalise some elements for permanency.

It is proposed that the following elements remain in place as permanent fixtures:

- Crossing on Burringbar Street at Station Street end



- Narrowing of road at central intersection of Stuart and Burringbar Streets



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- Wheel stops to stop vehicles encroaching on pedestrian space



Before

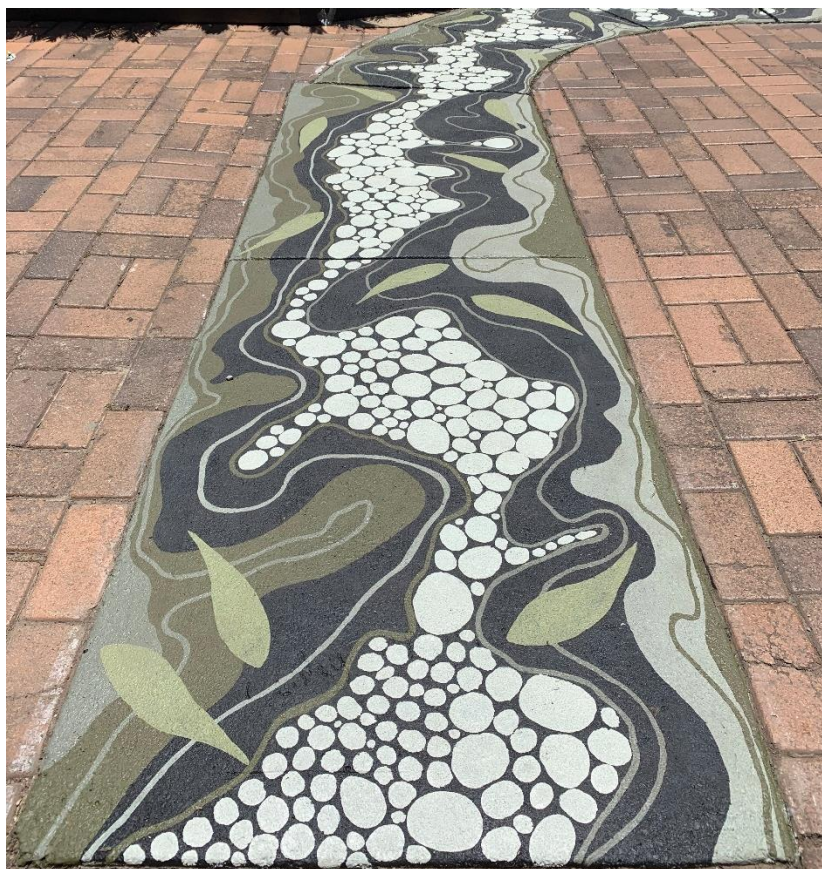


After

- Sandstone seating



- Arakwal art at central intersection



- Speed zone reduction (pending final approval from TfNSW)



- Entry strips (next to crossing at either end of Burringbar Street)



It is also proposed that Council staff work towards a request for quotation to design a more permanent solution to continue to implement the Talking Street principles for the trial area and an appropriate narrowing solution for the Stuart Street/Burringbar Street intersection after feedback indicated that the temporary white bollards are aesthetically unpopular.

5

RECOMMENDATION:

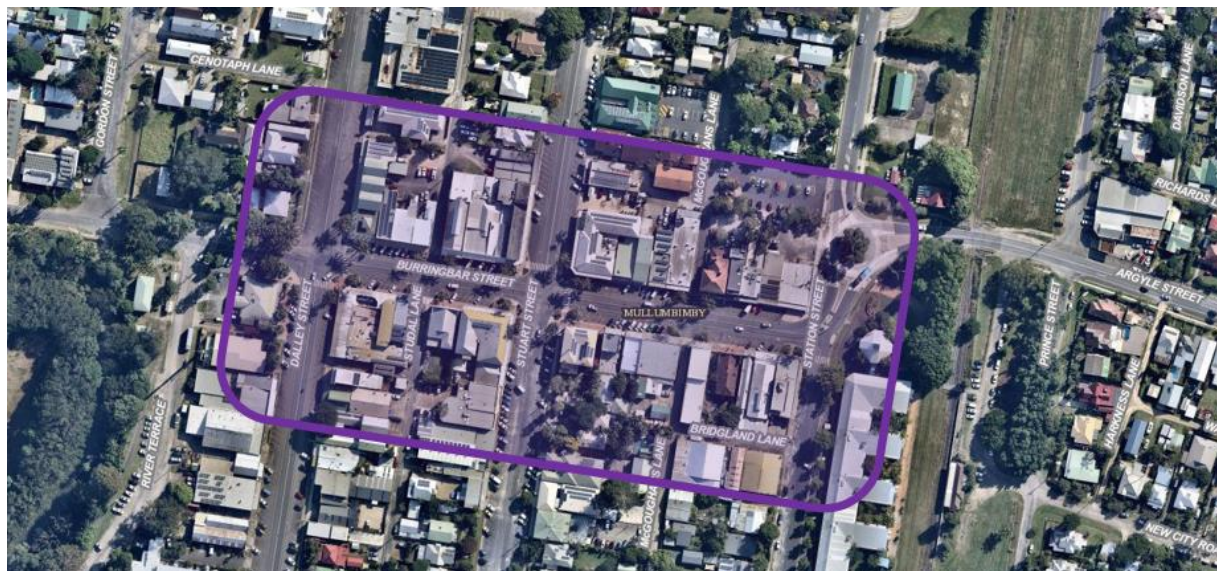
1. That Council thanks the community and business members of the Talking Street Working Group for their collaboration and valuable input on the project.
2. That Council notes the evaluation of the Talking Street Trial contained in the report.
3. That Council endorses the drafting and release of a Request for Quotation to design a more permanent solution for the street – implementing the principles of the trial – including narrowing the central intersection of Burringbar and Stuart Streets.
4. That Council notes that the evaluation will be submitted to the Department of Planning Industry and Environment as part of the Streets as Shared Spaces grant acquittal.

Attachments:

- 1 24.2020.47.1 - Your Say Survey _Feedback_On_The_Talking_Street_Trial, E2022/16089
- 2 24.2020.47.1 - Survey Monkey responses - Talking Street Working Group - Evaluation, E2022/16087
- 3 Form of Special Disclosure of Pecuniary Interest, E2012/2815

Report

Subject area of the trial



Aims and objectives of the trial

- 5 The key aims of the Talking Street Trial on Burringbar Street were:
 - Improve safety for pedestrians using the street.
 - Create more places for people to linger/ hang out along the street.
 - Make crossing the road easier.
 - Slow traffic.
- 10
 - Reduce traffic.
 - Beautify and improve the quality of public space.

Trial Elements

- Speed zone reduction
- Temporary pedestrian crossing.
- 15
 - Narrowing of central intersection with bollards and road paint.
 - Entrance painting at each crossing either end of Burringbar Street.
 - Installation of two temporary parklets.
 - Installation of 8 sandstone seats.

- Mural art at two corners of the central intersection depicting stories sacred to country
- Wheel stops installed to create more space for pedestrians on footpaths.
- Integration of cycling area with general traffic (removal of cycling lanes) at central intersection.

5 Working group process

A working group was formed to guide the trial – made up of key community stakeholders, including representatives from the Mullumbimby Chamber of Commerce, local community groups and Mullumbimby Residents Association, Place Planning Collective, and Creative Mullumbimby. The group was heavily involved in a co-design process that sought to clarify and create the desired elements to be installed. As the project evolved, the working group were regularly consulted for feedback on various elements and decisions about installation and removal of elements.

Group members reported a sense of satisfaction from having been involved in a collaborative process that involved Council and a variety of community viewpoints. This collaborative model was considered successful both by Council staff and the community members involved.

Group members suggested that the downfalls of the process were that meetings weren't frequent or regular enough, that there was no clear strategy for getting from vision to execution and that communication of the 'why' for the project was lacking. This feedback provides valuable insight for any future tactical urbanism projects for Council, and might contribute to a more successful outcome in future.

Group members also identified the slowing down of traffic on Burringbar Street and in particular the constriction of the central intersection at Burringbar and Stuart Streets as the most successful elements of the trial.

The surveys completed by some members of the working group can be found in Attachment 2 of this report.

Challenges

Social climate – social challenges presented by the COVID pandemic further amplified patterns of social division and created social friction in the Mullumbimby community and at the time the trial was undertaken.

Parklets – the installation of parklets during the trial was one example of this amplification of existing social divisions and issues. The need for the parklets was clearly apparent, with a high uptake and consistent use by some parts of the community, however this use was also associated over the long term, with an increase in anti-social behaviour in the town centre. Some of the users of the parklet were rough sleepers, who otherwise didn't feel comfortable occupying space within the commercial centre.



COVID disruptions - The Talking Street Trial was impacted by COVID related disruptions. The closure of the state border during 2020 and 2021 meant that we were unable to procure certain services over long periods. Various restrictions also substantially reduced the number of people using the street and prevented activation activities from being implemented.

Difficulty communicating intent of trial elements - COVID disruptions also meant that traditional methods of face-to-face communication and engagement were difficult. This sometimes meant that the 'why' of elements of the Talking Street Trial was lost.

Feedback on the Trial

During the trial, the Your Say page received more than 115 online responses.

Responses generally suggested a lack of understanding for the trial's aims, with many lamenting the fact that the trial was 'slowing down traffic' or 'creating congestion' when in fact, these would indicate success for some elements of the trial.

Respondents were also concerned about the inability for cars to 'slip by' when turning left at the central intersection. The finalisation of construction on Tincogan and Fern Streets should help to provide an alternative route that alleviates some of these concerns – or at least provides an alternate option.

In addition, over 60 respondents were critical of the white bollards. People thought they looked 'ugly' 'distracting' and unattractive.

Ten respondents expressed concern about the elimination of the dedicated cycle lanes and the impacts this had on cycling safety.

However, there was also notable positive general commentary from respondents, with some survey respondents commenting that the changes made a more pedestrian friendly

environment and made the road easier to cross, and the that the sandstone seating and art made town a nicer place to hang out in.

Opportunities for improvement

The following points identify lessons learnt in relation to project process and physical elements.

- **Less is more** – Staff have learned that selecting a small number of elements and doing them well is better trying to do too many with limited resources.
- **Trialling is an effective way to test ideas** – but in a system made for permanency can come with challenges in terms of approvals and attitudes. Council should continue to investigate creative ways to deliver projects in a fashion that is lighter, quicker and cheaper.
- **Aesthetics matter** – Tactical urbanism allows place-makers to ‘trial’ elements in low-cost ways, without spending too much on aesthetics or permanent infrastructure. However, the trade-off is that sometimes these ‘temporary solutions’ are not as well rounded in terms of their aesthetics. This was the case for the bollards used at the central intersection. One upside to this was the community initiative to crochet ‘socks’ for the bollards. These not only offered a bright bit of fun for the project, but gave community members a sense of ownership and direct contribution to the project.
- **Rethinking cycling safety** – Though intended to improve the situation for cyclist and other road users, the feedback from surveys during the trial is that the integration of cycling lanes with the general traffic at the main intersection does not improve safety. Careful consideration for the final design will be required to understand how to make the street a safer and more comfortable place for cyclists.

Successful trial elements

Elements that are proposed to be made permanent

The following elements were effective in achieving the aims of the trial and are recommended for permanency.

Element	Action required to make permanent at time of report writing (some may now be complete)
Pedestrian crossing on Burringbar Street (Station Street end)	No action required. Note that the maintenance of the solar lights would be Council responsibility.
Narrowing of road at central intersection (Burringbar and Stuart Streets)	Installation of rumble bumps as interim measure as most bollards are gone. RFQ for design of permanent works for this and whole street (budget already exists for this design stage). Construction works to be funded through grant or other source.
Wheel stops along both sides of Burringbar Street	No action required. Additional maintenance cost considerations as street sweeper cannot gain access with wheel stops.
Sandstone street seating	Addition of grates over gutters in two locations to provide better accessibility.
Arakwal art at central intersection	No further action required – artists has advised that they are unable to complete two remaining corners. Note that when existing artworks deteriorate there is no budget to preserve them.
Speed zone reduction	Pending final approval from TfNSW.
Entrance painting (next to crossings at either end of Burringbar Street)	No further action required. Will need to be repainted in the future.

Elements that are proposed not to be made permanent

The following elements are recommended not to be made permanent.

- Parklets – removed part way through the trial.
- Bollards – to be replaced in final design by kerb build-outs or similar through the permanent design process.

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
Community Objective 4: We manage growth and change responsibly	4.1: Support the visions and aspirations of local communities through place-based planning and management	4.1.1: Develop, implement and update Place Plans that promote place-based forward planning strategies and actions	4.1.1.7	Evaluate 'Talking Street', Mullumbimby project trial

Recent Resolutions

- 21-347
- 21-084
- 21-044
- 20-479

Legal/Statutory/Policy Considerations

NIL.

Financial Considerations

There is currently a budget of approximately \$40,000 available for the implementation of the Mullumbimby Masterplan. Part of this available budget will be required for the design of the upgrade to Burringbar Street including intersection narrowing as described above. Construction works to be funded through grant or other source.

Other ongoing maintenance costs should be minor in nature.

Consultation and Engagement

Outlined in the body of the report.

Report No. 13.12 PLANNING - 10.2021.750.1 Boundary adjustment of disused rail land with adjoining land

Directorate: Sustainable Environment and Economy

5 **Report Author:** Chris Larkin, Manager Sustainable Development

File No: I2022/564

Proposal:

DA No:	10.2021.750.1		
NSW PP	PAN-167041		
Proposal description:	Boundary adjustment of disused rail land with adjoining land at 156 Jonson Street Byron Bay		
Property description:	LOT: 4729 DP: 1228104, LOT: 9 DP: 818197		
	Butler Street Byron Bay, 156 Jonson Street Byron Bay		
Parcel No/s:	268546, 157320		
Applicant:	Knight Frank		
Owner:	Transport Asset Holding Entity of New South Wales		
Byron LEP 1988	5(a) Special Uses (Railway)		
Byron LEP 2014	SP2 Infrastructure (Railway Corridor) SP2 Infrastructure (Car Park) C2 Environmental Conservation C3 Environmental Management		
Date received:	15 November 2021		
Integrated / Designated Development:	<input type="checkbox"/> Integrated	<input checked="" type="checkbox"/> Designated	<input type="checkbox"/> Not applicable
Public notification or exhibition:	<ul style="list-style-type: none"> Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications Exhibition period: 19/11/21 to 17/12/21 No Submissions were received 		
Delegation to determine	Council		

Summary:

The DA proposes a Boundary adjustment of disused rail land with the adjacent property at 156 Jonson Street Byron Bay, comprising a small area of 2035 m². The total area of this section of rail corridor is some 13.73 hectares. As the Rail corridor includes mapped coastal wetland (SEPP Coastal Management 2018) the proposal is designated development. Council staff do not have delegations to determine such DA's.

The purpose of the boundary adjustment is to enlarge the adjacent property which is planned for a carpark associated with a DA for a retail development on the site of the old Wicked Weasel factory fronting Browning Street.

The section of rail corridor to be excised won't affect the ability of the railway line to be used for rail if the train is returned and the new boundary aligns with the adjacent boundary of the land to the north.

The proposal being a boundary adjustment has no impact on the Coastal Wetlands or on lands zoned Environmental Conservation or Environmental Management.

The application appropriately addresses the relevant constraints applying to the site, and is recommended for approval subject to the conditions listed in the Recommendation of this Report below.



NOTE TO COUNCILLORS:

In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have been called by the mover and seconder of all motions relating to this report.

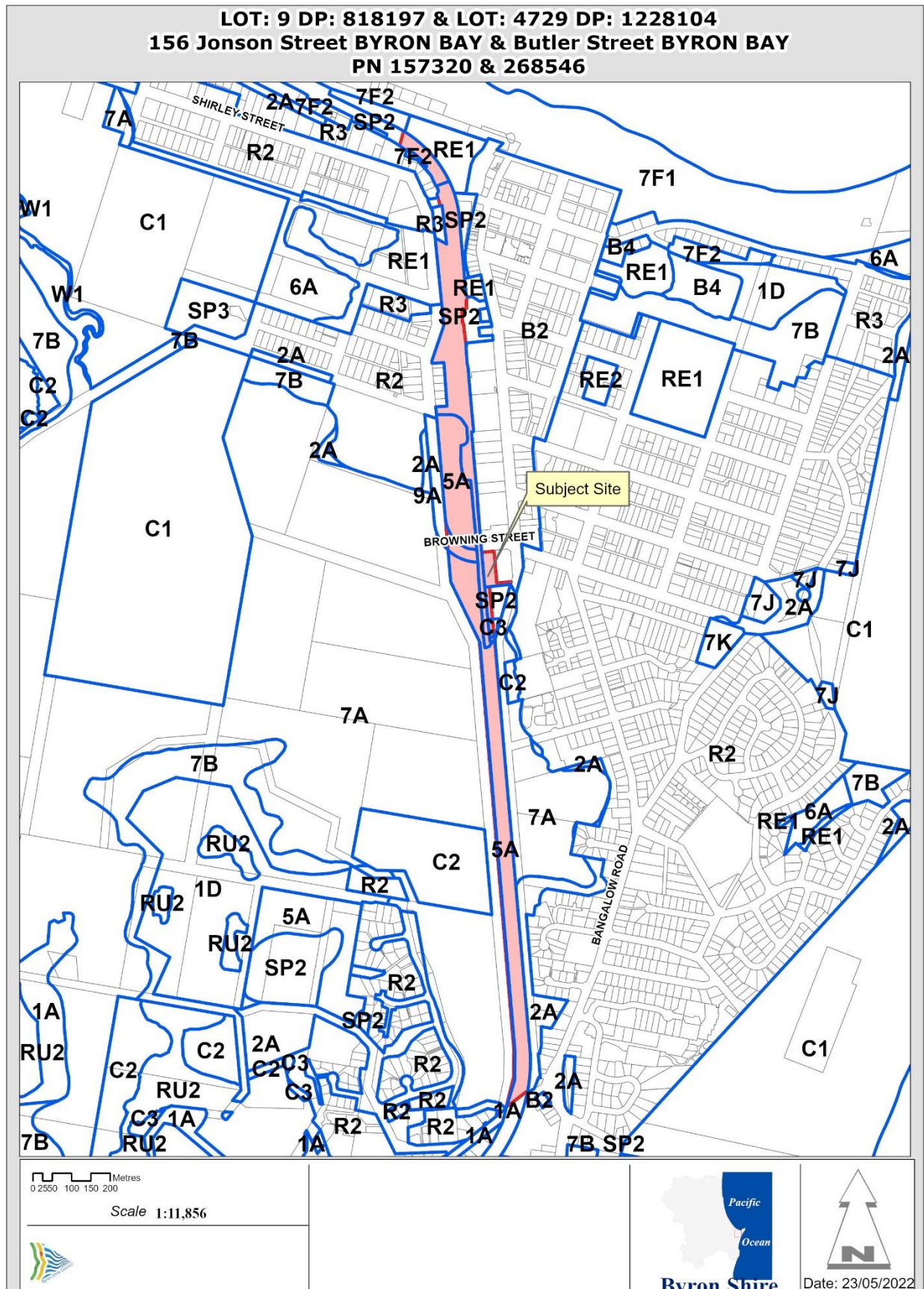
RECOMMENDATION:

That Pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2021.750.1 for boundary adjustment of disused rail land with adjoining land at 156 Jonson Street Byron Bay, be approved subject to Conditions of Consent in Attachment 2 (#E2022/47151).

Attachments:

- 1 10.2021.750.1 Proposed Plans, E2022/47149 
- 2 10.2021.750.1 Conditions of Consent, E2022/47151 

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Assessment:

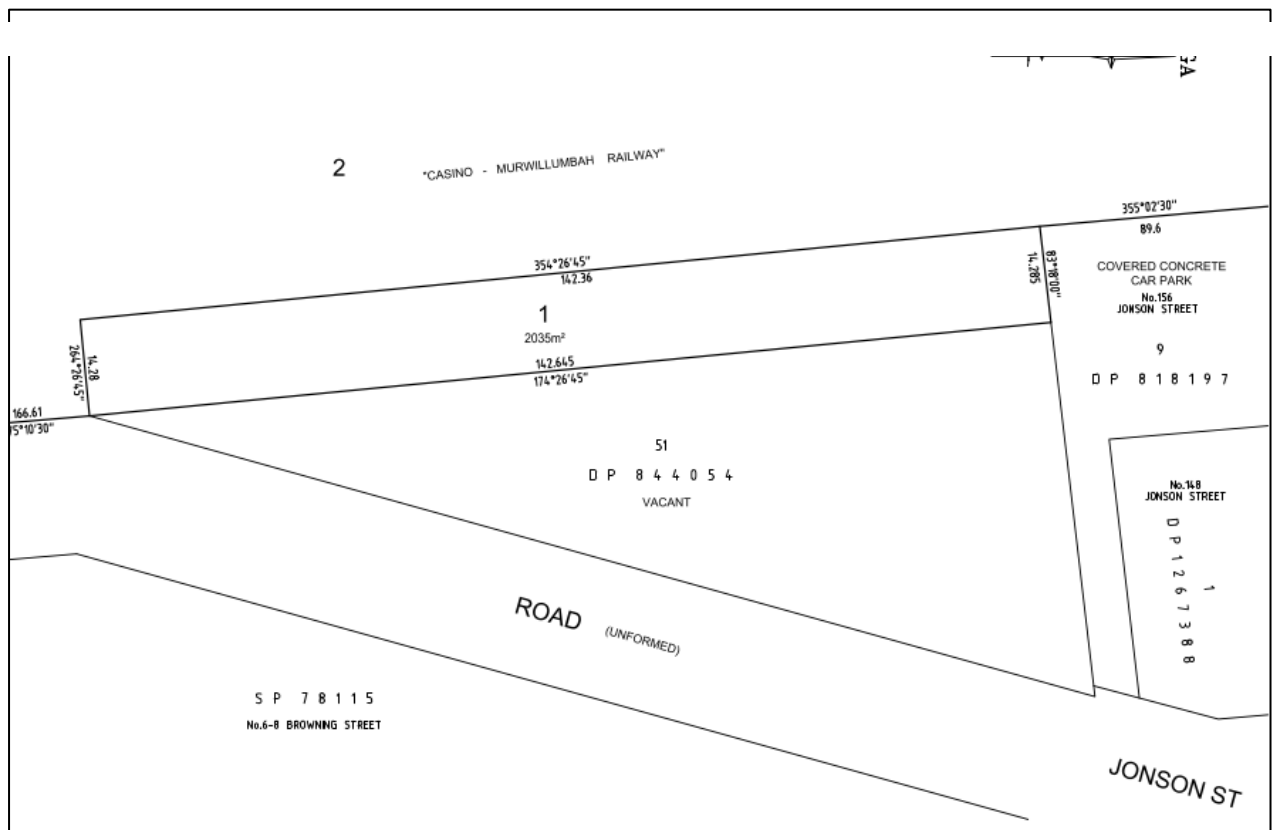
INTRODUCTION

History/Background

- 5 The subject site to be excised is part of the Rail Corridor traversing through Byron Bay. Its history and background relates to rail transportation.

Description of the proposed development

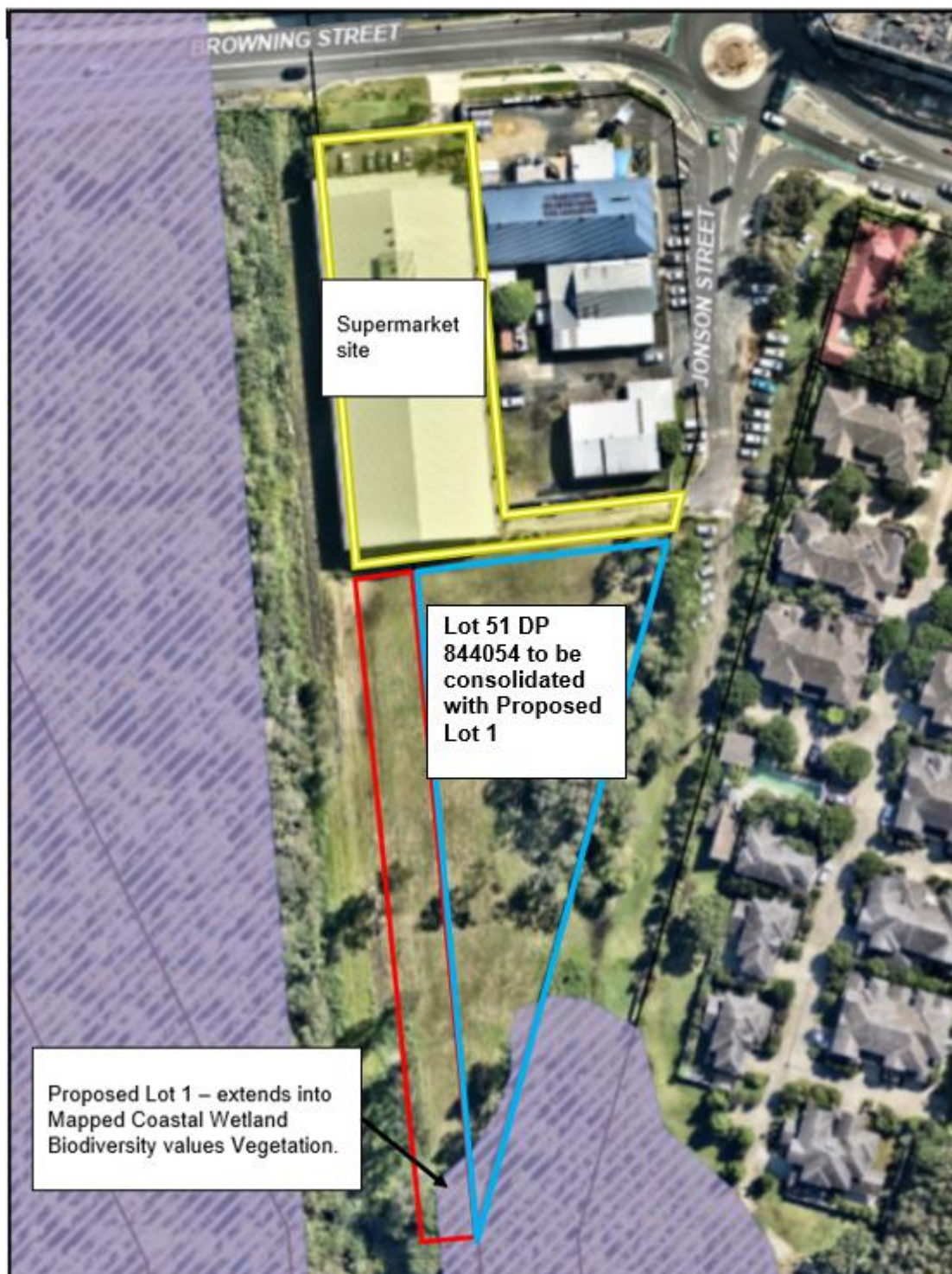
This application seeks approval for Boundary adjustment of disused rail land with adjoining land at 156 Jonson Street Byron Bay.



Extract from Proposed subdivision Plans

The proposal is to excise 2035 m2 from this section of rail corridor which has a total area of 13.73 hectares. The subject Lot 1 will then be consolidated with the adjacent Lot 51 DP 844054, which is vacant land.

A development application is currently before Council to utilise the consolidated site and the adjacent Lot 9 DP 818917 for a retail development comprising Harris Farm Supermarket as the core tenant and construction of a multi-level car park with access from Jonson Street. That application will be presented to Council separately.



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Description of the site

Land is legally described	LOT: 4729 DP: 1228104, LOT: 9 DP: 818197
Property address	Butler Street Byron Bay, 156 Jonson Street Byron Bay
Byron LEP 1988	5(a) Special uses (Railway)
Byron LEP 2014	SP2 Infrastructure (Railway Corridor) SP2 Infrastructure (Car Park) C2 Environmental Conservation C3 Environmental Management
Land area	Lot 4729 DP– 13.73ha Lot 9 DP 818917 – 3122 m2
Property to be excised from the rail corridor is constrained by:	Flood Liable Land, Bushfire Prone Land, Acid Sulfate Soils Class 2 High Environmental Value vegetation with a small area of the site mapped as Coastal Wetland/ Biodiversity Values.

SUMMARY OF REFERRALS

Referral	Issue
Environmental Health Officer*	No objections subject to conditions.
Development Engineer	No objections subject to conditions.
Natural Resource Planner	No objections subject to conditions. See discussion below on Biodiversity Conservation Act.

5

SECTION 100B Rural Fires Act 1997

The Subject land is identified as a bushfire prone and as such the subdivision is identified as integrated development pursuant to section 4.46 of the EPA Act 1979. The proposal was forwarded to the Rural Fire Service for approval who have issued a Bushfire Safety Permit with no specific conditions.

10

SECTION 4.15C – MATTERS FOR CONSIDERATION – DISCUSSION OF ISSUES

Having regard to the matters for consideration detailed in Section 4.15(1) of the Environmental Planning & Assessment Act 1979 (EP&A Act), the following is a summary of the evaluation of the issues.

5 Biodiversity Conservation Act 2016

A small part of the site which is mapped as Coastal Wetland is also mapped on the Biodiversity Values Map under the Biodiversity Conservation Act 2016. Although no physical works are proposed within the mapped area, Clause 7.1(3) of the Biodiversity Regulations requires this application to consider the future development of the land being a car park. The applicants submitted a Biodiversity Assessment Report in accordance with the Act. The future car park proposal was considered to have a minimal impact on the mapped land with no future works even proposed in this area for the future car park, but to facilitate this future development the applicants are still to retire 1 Ecosystem Credit for the Paperbark Swamp Forest (1064 – Paperbark swamp forest of the coastal lowlands of the NSW North Coast Bioregion and Sydney Basin Bioregion).

Conditions of consent to apply.

State Environmental Planning Instruments (SEPP)

20 4.1 State Environmental Planning Policies (SEPP)

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal management

25 The southern corner of the property is mapped as being affected by Coastal Wetlands. NO works are proposed in the wetland

30 Division 1, Section 2.7 of the SEPP relates to Coastal wetlands and littoral rainforests areas. Under the provisions of this Section, development consent is required for the proposal and the work is declared to be designated development.

Subclause (4) provides:

35 *(4) A consent authority must not grant consent for development referred to in subsection (1) unless the consent authority is satisfied that sufficient measures have been, or will be, taken to protect, and where possible enhance, the biophysical, hydrological and ecological integrity of the coastal wetland or littoral rainforest.*

40 As there are no works proposed in the wetland, this is considered satisfactory with respect to the considerations of this clause.

Division 1, Section 2.8 of the SEPP relates to Development on land in proximity to coastal wetlands or littoral rainforest. This section provides:

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5 (1) *Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on—*

(a) *the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*

(b) *the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*

10 (2) *This section does not apply to land that is identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map.*

As discussed above no works are proposed in the wetland as a result of this subdivision and the proposal is considered satisfactory.

15 Division 3 Section 2.10 relates to development on land within the coastal environment area. No part of the subject site including the extended section of rail corridor is mapped as coastal environment area. Therefore, the proposal is satisfactory with respect to this Section.

20 Division 4 Section 2.11 relates to Development on land within the coastal use area. Part of the extended rail corridor near Lawson and Shirley Street to the north are mapped, but the land to be excised from the rail corridor is not. The provisions requires:

25 (1) *Development consent must not be granted to development on land that is within the coastal use area unless the consent authority—*

(a) *has considered whether the proposed development is likely to cause an adverse impact on the following—*

30 (i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*

(ii) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*

(iii) *the visual amenity and scenic qualities of the coast, including coastal headlands,*

35 (iv) *Aboriginal cultural heritage, practices and places,*

(v) *cultural and built environment heritage, and*

(b) *is satisfied that—*

(i) *the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*

40 (ii) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*

(iii) *if that impact cannot be minimised—the development will be managed to mitigate that impact, and*

(c) *has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

- 5 It is considered the proposed excision of the section of rail corridor proposed does not offend the above provisions and is satisfactory.

Chapter 4 – Remediation of Land

10 This chapter requires the consent authority to consider if the land is contaminated and, if so, whether the land needs to be remediated before it will be suitable for the proposed use.

15 The subject subdivision does not raise any specific issues, however it is noted that the matter is being assessed and considered in detail for the Harris Farm DA and associated car park which requires earthworks and construction. A Preliminary Contamination Report has been prepared by ENV Solution which found that the site has residual contamination from previous uses associated with the Railway Corridor, sawmilling, the dairy industry and potentially sand mining. The ENV Solution report indicates that the levels of contamination are within acceptable levels and assessment criteria with respect to the protection of human health, in terms of the proposed development being of a commercial nature. In this regard there is no residential development proposed.

25 A further Detailed Site Investigation Report from ENV Solutions dated May 2022 has since been further submitted to Council with additional soil sampling undertaken within the rail corridor. The sampling indicates anthropogenic waste such as brick and rubble refuse was found. The report indicates that this will need to be considered relative to the proposed future works from a geotechnical perspective and for management of any excavated spoil at the construction stage. Any waste that is excavated would need to be separated and handled and disposed of appropriately. It is considered this is beyond the scope of this DA being a subdivision and not involving any construction works, and will need to be considered and conditioned if approved for the Harris Farm Supermarket DA.

35 In conclusion it is considered the land is suitable for the development as proposed in terms of the contamination provision of the SEPP.

SEPP (Transport and Infrastructure) 2021

Chapter 2 – Infrastructure

40 The proposal was forwarded to TfNSW in accordance with Clause 85 of the Infrastructure SEPP - now Clause 2.97 of the T and I SEPP 2021 for comment. TfNSW raised no objection to the proposal other than requesting that contamination being further investigated further. As discussed above a Detailed Investigation Report has been prepared which examines the subject land including the railway component to be excised. This was subsequently sent to TfNSW for consideration and they have advised that they are satisfied the site is suitable for the proposed development.

SEPP (Biodiversity and Conservation) 2021

Chapter 4 – Koala Habitat Protection 2021

- 5 The broader railway corridor contains Koala habitat as mapped under the CKPOM, however the area of the boundary adjustment does not. The proposal raises no issues under the SEPP.

4.2A Byron Local Environmental Plan 2014 (LEP 2014)**10 Clause 4.1D Exceptions to Minimum Subdivision Lot Sizes for certain split zones**

- 15 The provisions enable land with split zoning to be subdivided where minimum lot sizes can't be complied with. In particular the area of land zoned C2 and C3 now has a minimum lot size of 40 hectares. The proposed subdivision will retain these environmental areas within the same lot and will not result in them being further fragmented. The remaining part
15 of the subject lot to be excised is zoned SP2 Infrastructure (car park) does not have a minimum lot size mapped attached to it and it is to be ultimately used for a carpark ancillary to a commercial retail development. The residual larger lot 2 containing the rest of the railway corridor does not have a minimum lot size for subdivision. It is considered the proposal is consistent with the clause.

20

Clause 5.10 Heritage Conservation

The subject rail corridor includes heritage items in and around the Byron Bay Railway Station and is identified in the LEP as Railway Station and Yard Group.

- 25 The proposed subdivision of the excess railway land has no impact upon the heritage item, its characteristics or its setting being some 650 metres distant to the south. The proposal is considered acceptable in terms of the heritage provisions under Clause 5.10.

4.2B Byron Local Environmental Plan 1988 (LEP 1988)

- 30 Part of the subject rail corridor is zoned 5(a) Special Uses (railway). No part of the subject site to be excised is in the 5(a) Zone and it is considered the proposal does not offend or compromise the provisions of the Byron LEP 1988.

4.3 Any proposed Instrument that has been the subject of public consultation and has been notified to the consent authority

- 35 No draft environmental planning instruments affect the proposal.

4.4A Byron Shire Development Control Plan 2014 (DCP 2014)**Chapter B1 Biodiversity**

- 40 The proposal subject to the retirement of the one biodiversity credit as recommended above raises no issues in terms of the provisions of Chapter B1.

Chapter D6 Subdivision

The proposed boundary adjustment raises no issues under the DCP. Standard conditions of consent recommended in relation to the submission of and approval of the Subdivision certificate.

4.5 Environmental Planning & Assessment Regulation 2000 and 2021 Considerations

The proposed development raises no issues under the EPA Regulations.

4.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

The proposed subdivision does not generate any adverse impacts on the built or natural environment or the amenity of the neighbourhood.

4.7 The suitability of the site for the development

The proposed excision of the excess railway land from the corridor still enables the railway corridor to function if and when trains ever return to the network. The proposal raises no issues in terms of site suitability.

4.8 Submissions made in accordance with this Act or the regulations

The proposal was exhibited, and no submissions were received.

4.9 Public interest

The proposed development is unlikely to prejudice or compromise the public interest or create an undesirable precedent.

4.10 Requirements for designated development

Section 4.16(9) of the Act provides that a consent authority must not determine an application for designated development until after the submission period has expired, or, if a submission is made within the submission period, until after 21 days following the date on which a copy of the submission is forwarded to the Planning Secretary.

(9) Restrictions on determination of development applications for designated development A consent authority must not determine a development application for designated development—

- (a) until after the submission period (within the meaning of Schedule 1) has expired, or
- (b) if a submission is made with respect to the application within the submission period, until after 21 days following the date on which a copy of the submission is forwarded to the Planning Secretary have expired.

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The application was advertised and notified for a period of 28 days from 19 November 2021 to 17 December 2021 and no public submissions were made during this time. Council is able to determine the application.

5 4.11 Section 4.33 of the EPA Act 1979

As the proposal is a Crown development application to excise this small portion of State Rail Land from the larger railway corridor, Council cannot refuse the application nor impose a condition of consent unless the Minister agrees to the application being refused or the conditions of consent being imposed. Council referred the draft conditions of consent as required and the applicants have agreed to those conditions on behalf of the Minister.

DEVELOPER CONTRIBUTIONS

5.1 Water & Sewer Levies

15 5.2 Developer Contributions

The proposal does not generate S7.11 or S7.12 Developer Contributions. These would be levied when the subject land is being developed under S7.12 of the EPA Act 1979 and as per Councils adopted contribution plans

DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

Disclosure details	Response
Has a Disclosure Statement been received in relation to this application? If Yes, Provide Disclosure Statement register reference: 91.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed.	Yes <input checked="" type="checkbox"/> No <input checked="" type="checkbox"/>

20 CONCLUSION

The DA proposes Boundary adjustment of disused rail land with adjoining land at 156 Jonson Street Byron Bay.

25 The proposed development is satisfactory having regard to the relevant environmental planning instruments and planning controls applicable to the site. The proposal raises no significant issues in terms of environmental impacts which cannot be managed and the site is considered suitable for the development. The application appropriately addresses the relevant constraints applying to the site and is recommended for approval.

REASONS FOR DECISION, HOW COMMUNITY VIEWS WERE ADDRESSED

Note: From July 1 2018, Council's are required to give and publicly notify reasons for a range of planning decisions where they are deciding if development should proceed to help community members to see how their views have been taken into account and improve accountability to stakeholders. A statement of reasons for the determination of this application is provided below.

Statement of Reasons

The proposed development complies with the provisions of Byron Local Environmental Plan 1988.

The proposed development complies with the provisions of Byron Local Environmental Plan 2014.

The proposed development complies with relevant State Environmental Planning Policies

The proposed development complies with relevant provisions of the Byron Development Control Plans

The proposed development will not have significant adverse impact on the natural, built or social environment or economic impacts on the locality.

The proposed development is considered suitable for the proposed site.

The development application was notified/advertised in accordance with the Community Participation Plan. Issues raised in the submissions have been addressed during assessment of the application.

The proposed development is unlikely to prejudice or compromise the public interest.

5

How community views were addressed

The DA was notified/advertised in accordance with Byron Shire Council Community Participation Plan (CPP). No submissions were received.

Report No. 13.13 PLANNING - Report of the Planning Review Committee held 2 June 2022

Directorate: Sustainable Environment and Economy

Report Author: Chris Larkin, Manager Sustainable Development
Noreen Scott, EA Sustainable Environment and Economy

File No: I2022/672

Summary:

This report provides the outcome of the Planning Review Committee (PRC) held on 2 June 2022.

NOTE TO COUNCILLORS:

In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have been called by the mover and seconder of all motions relating to this report.

RECOMMENDATION:

That Council endorses the outcomes of the Planning Review Committee meeting held on 2 June 2022.

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Report

The Planning Review Committee meeting was held on 2 June 2022. The meeting commenced at 3.35pm and concluded at 4.20pm.

Councillors: M Lyon (Mayor), D. Dey, P Westheimer, A. Hunter, A Pugh, S Ndiaye

5 Apologies: Nil

Staff: Shannon Burt (Director Sustainable Environment and Economy), Chris Larkin (Manager Sustainable Development)

The following development applications and s4.55 applications were reviewed with the outcome shown in the final column.

DA No. / Applicant	Property Address / Proposal	Consultation / Submissions	Reason/s / Outcome
10.2022.165.1 JD Property Group Pty Ltd	139 Jonson Street BYRON BAY Change of Use of Storage Area in Basement of Level 1 to Restaurant and Change of Use of Storage Area in Basement Level 2 to Three (3) Car Parking Spaces	Level 2 4/5/22 to 17/5/22 13 submissions supporting	Staff
10.2021.551.1 Space Studio Pty Ltd	Unit 1 59 Kingsley Street BYRON BAY Demolition of Existing Dwelling and Construction of New Dwelling House, Swimming Pool, Garage and Tree Removal	Level 1 20/9/21 to 3/10/21 1 submission against	Staff
10.2019.466.2 Elevendon Pty Ltd	41 Bottlebrush Crescent SUFFOLK PARK S4.55 Modify development consent to include retaining walls	Level 2 13/4/22 to 3/5/22 No submission received	Staff
10.2019.616.5 JD Property Group Pty Ltd	139 Jonson Street BYRON BAY S4.55 to Modify Hours of Operation and Approved Plans	Level 2 29/4/22 to 12/5/2022 1 submission supporting	Staff
10.2020.100.2 Planners North	533 Bangalow Road TALOFA S4.55 for Changes to Cabin Design and Configuration	Level 2 1/3/22 to 14/3/22 No submission received	Staff

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Report No. 13.14 PLANNING - 10.2021.411.1 Community Title Subdivision consisting of Three (3) Community Title Lots and One (1) Neighbourhood Property 139 Broken Head Reserve Road BROKEN HEAD

5

Directorate: Sustainable Environment and Economy

Report Author: Ivan Holland, Planner

File No: I2022/589

Proposal:

DA No: 10.2021.411.1

NSW PP PAN-114491

Proposal description: Community Title Subdivision consisting of Three (3) Community Title Lots and One (1) Neighbourhood Property

Property description: LOT: 2 DP: 1246381
139 Broken Head Reserve Road BROKEN HEAD

Parcel No/s: 269415

Applicant: Mr P F Morrison

Owner: Mr P F Morrison

Zoning: PART C2 Environmental Conservation / PART SP3 Tourist - Byron LEP 2014
PART 7(f1) Coastal - Byron LEP 1988

Date received: 19 July 2021

Integrated / Designated Development: ☒ Integrated ☒ Designated ☐ Not applicable

Concurrence required Yes: CNR-25499

Public – Level 2 advertising under DCP 2014 Part A14 – Public Notification

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notification or exhibition: and Exhibition of Development Applications

- Exhibition period: 29/7/21 to 11/8/21
- Submissions received: One (1)
- Submissions acknowledged: ☐ Yes ☒ No ☐ N/A

Other approvals ☐ N/R ☐ W & S (68) ☐ OSMS (68) ☐ ST (68) ☐ RA (138)

Other:

Planning Review Committee: 2/9/2021 – referred for determination under staff delegation however proposal is outside scope of staff delegations

Variation request to Development Standards under an EPI (eg clause 4.6) Clause 4.6

Delegation to determine Council

Issues:

- Subdivision requires two (2) variations to minimum lot size

Summary:

This application seeks approval for a community title subdivision consisting of three (3) community title lots and one (1) neighbourhood property.

- 5 The three (3) community title lots are to be created around approved development that is either a dwelling (lot 3) or tourist accommodation and a manager's residence (lots 2 and 4). The residual land will be incorporated into a single neighbourhood property (lot 1). Proposed Lot 2 and Lot 4 are substantially less than the minimum lot size, for SP3 zoned land and proposed lot 3 comprises land zoned 7(f1) and is substantially less than the
- 10 minimum lot size for this zone. Although the variations sought to minimum lot size are significant, they are not unreasonable for several reasons including:
- the land zoned SP3 and 7(f1) within the property is already less than the minimum lot size.
 - No tree removal or vegetation clearing is proposed.
- 15 • No new vegetation clearing entitlements will be created by the subdivision.

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- Two of the three small lots are already developed for residential/ tourist accommodation purposes, whilst the third small lot has an approval over it for further accommodation; and
- A Vegetation Management Plan has been provided to guide management of environmentally valuable and/or sensitive land within the site.

Relevant issues raised in the submission in opposition have been considered and are satisfactorily addressed by the proposal in combination with recommended conditions. The application appropriately addresses the relevant constraints applying to the site and is recommended for approval subject to the conditions listed in the Recommendation for this Report.








NOTE TO COUNCILLORS:

In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have been called by the mover and seconder of all motions relating to this report.

RECOMMENDATION:

That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2021.411.1 for Community Title Subdivision consisting of Three (3) Community Title Lots and One (1) Neighbourhood Property, be granted consent subject to the recommended conditions in Attachment 7 (#E2022/50270).

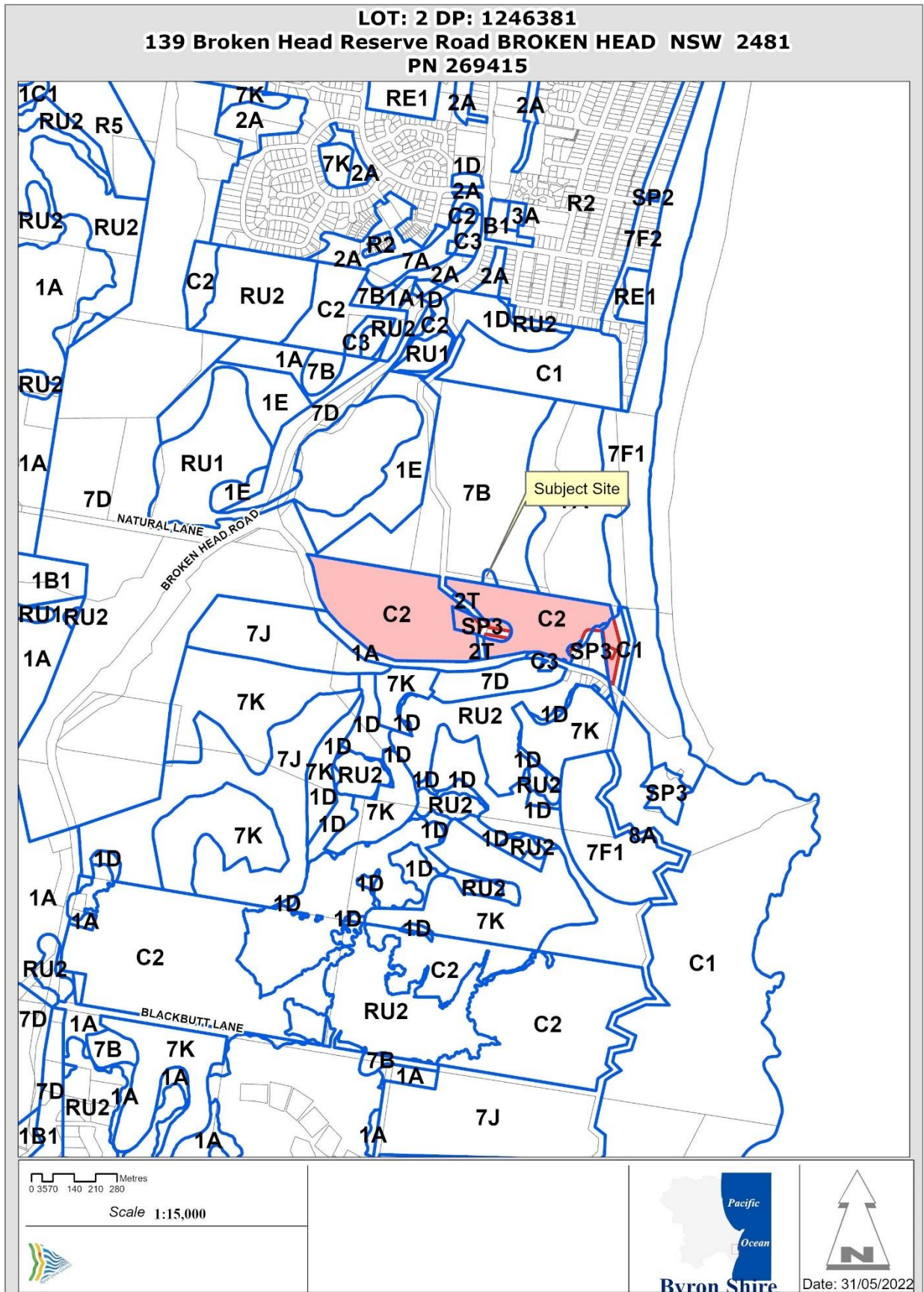
Attachments:

- 1 DA 10.2021.411.1 - Subdivision plan, E2021/94370 
- 2 DA 10.2021.411.1 - Vegetation Management Plan, E2021/94381 
- 3 DA 10.2021.411.1 - Neighbourhood Management Statement, E2021/94372 
- 4 DA 10.2021.411.1 - Submission, E2022/50120 
- 5 Letter to Council from DPIE: Concurrence not required, E2022/50160 
- 6 NSW Rural Fire Service - Bush Fire Safety Authority, E2022/50161 
- 7 DA 10.2021.411.1 - Recommended conditions, E2022/50270 

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Assessment:

1. INTRODUCTION

History/Background

Council's records indicate the following development approval history for the property:

- 5 • DA 10.2018.423.1 for swimming pool and spa – approved 30/11/2018

Council's records indicate the following development approval history for related parcels:

110400

- 10 • BA 6.1988.2342.1 for dwelling – approved 8/9/1988
- DA 5.1997.19.1 for dwelling, demolition of garage – approved 2/5/1997
- BA 6.1997.2549.1 for addition/alteration to dwelling – approved 30/10/1997
- DA 5.1998.162.1 for tourist facility – bed & breakfast – approved 16/6/1998
- DA 10.2010.148.1 for tree removal – approved 4/5/2010
- DA 10.2017.366.1 for swimming pool – approved 8/9/2017

15 240562

- DA 10.2005.762.2 to amend conditions of consent – approved 28/8/2008
- DA 10.2010.167.1 for staged Subdivision into 2 Strata Lots & Construct Tourist Facility & Managers Residence, Associated Earthworks, Vegetation Removal, Upgrade Existing Access & Installation of Gravity Sewer – withdrawn 21/9/2010
- 20 • DA 10.2011.306.1 for subdivision (to create two lots) and a tourist facility (two-bedroom tourist accommodation facility and manager's residence) – approved 27/6/2013
- DA 10.2011.306.2 to delete conditions 11 & 16 – approved 28/10/2013
- DA 10.2011.306.3 to amend conditions of consent – approved 20/2/2014
- 25 • DA 10.2011.306.4 to amend conditions - withdrawn 27/5/2014
- DA 10.2014.774.1 for a single storey art studio with integrated storeroom – approved 3/3/2015
- DA 10.2015.405.1 for eco-tourism facility – refused 24/5/2017 (two bedroom eco-tourist facility and one bedroom manager's residence approved by Court [2017/204048] on 29/11/2017)
- 30 • DA 10.2011.306.5 to modify subdivision layout - refused 24/5/2017
- DA 10.2015.405.2 to add swimming pool and storage area to approved eco-tourism facility – approved 25/7/2018
- DA 10.2018.423.1 for swimming pool and spa – approved 30/11/2018

Council's records indicate the following development advice history for the property:

- 22.2021.1.1 - community title subdivision – 16/2/2021 (E2021/34542)
- 29.2020.69.1 – endorsement of legal documents – 14/7/2020 (E2020/49259)

5

The proposed subdivision is designated development as the property includes mapped coastal wetland and littoral rainforest and was accompanied by an environmental impact statement (Sections 4.10, 4.12(8), EP&A Act). The Secretary's environmental impact assessment (EIS) requirements were provided with the application and were addressed in the EIS (Schedule 2, EP&A Regulations 2000). The development application was notified in accordance with the relevant provisions for designated development (cl.77 and 78, EP&A Regulations 2000).

10

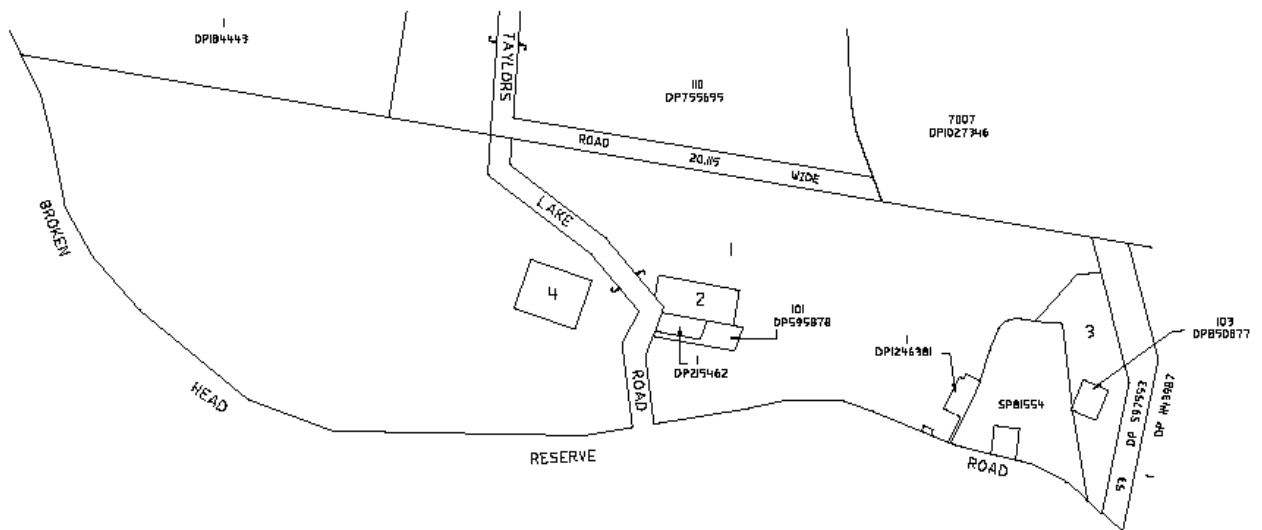
The applicant was advised on 21 April 2022 that, due to a change to LEP 2014 (cl.4.1AA), that the proposal now triggered a variation to a development standard in relation to the minimum lot size for land zoned SP3 Tourist. The applicant provided a written request to vary the standard on 22/4/22 (E2022/37087) and a request for concurrence from the Department of Planning Industry & Environment was made via the Planning Portal.

15

Description of the proposed development

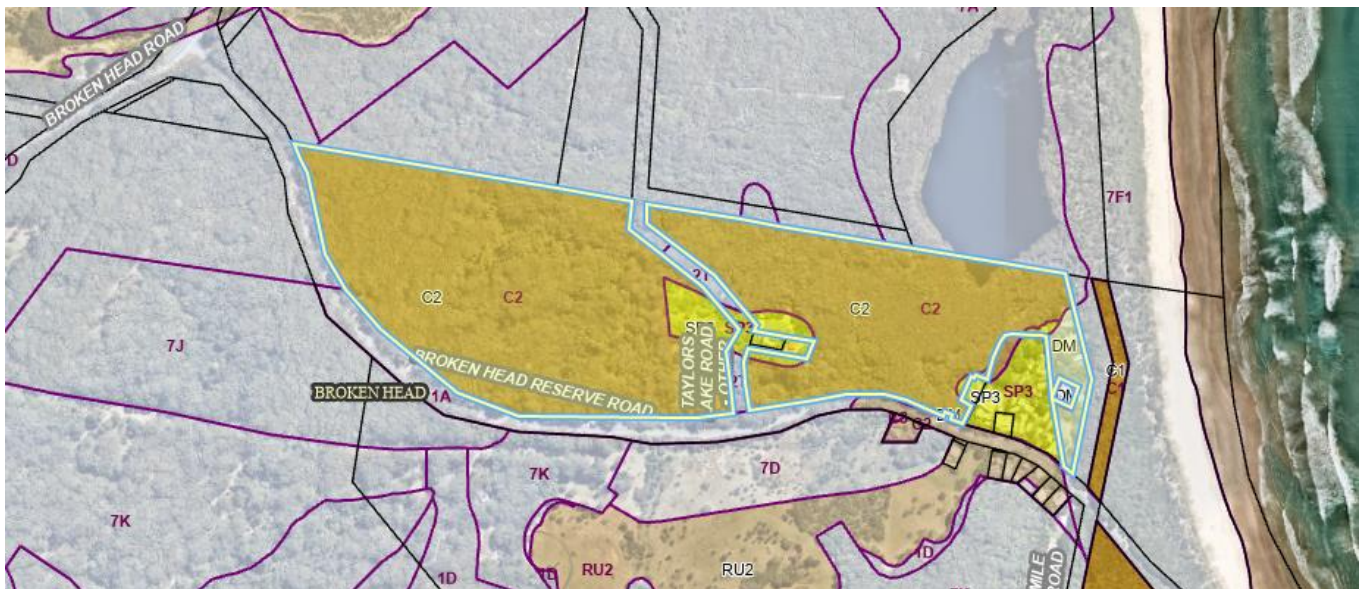
- 20 This application seeks approval for a community title subdivision consisting of three (3) community title lots and one (1) neighbourhood property (see Lots 1,2,3 and 4 in Figure 1 below). Details of the proposed lots are summarised below:

Lot number	Lot size	Approved use/development
1	20.2ha	No approved or constructed development
2	2465m ²	Eco-tourist facility (2-bedroom accommodation unit) and one-bedroom manager's residence (dwelling)
3	8378m ²	Dwelling house, swimming pool and studio
4	2850m ²	Tourist accommodation facility (2-bedroom unit) and manager's residence (dwelling) – approved but not constructed



Description of the site

- 5 The property borders Broken Head Reserve Road for the entire south and west boundary, Broken Head Nature Reserve and the coast to the east and Jali Local Aboriginal Land Council for much of the northern boundary (see Figure 2).



- 10 The property has several parcels within the boundaries, a crown road reserve (20m in width) that traverses the middle of the property in a roughly north-south directions and numerous easements and positive covenants on the eastern section of the property (see Figure 3 below).

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Is a BDAR required due to the location of the proposed development?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Are there any easements in favour of Council affecting the site?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Is there a Vegetation Management Plan which might affect the proposal?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Is there a Voluntary Planning Agreement which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

A site inspection was carried out on 30 May 2022

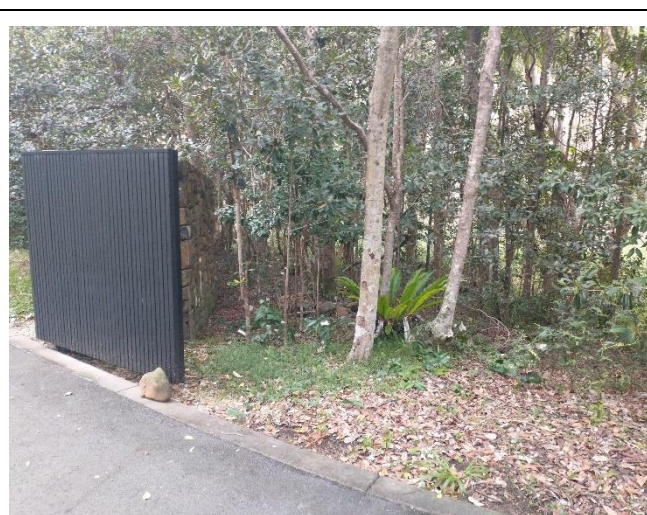


Photo 1. Entrance to proposed Lot 3 from SP81554, 'Pavilions'. View northwest.

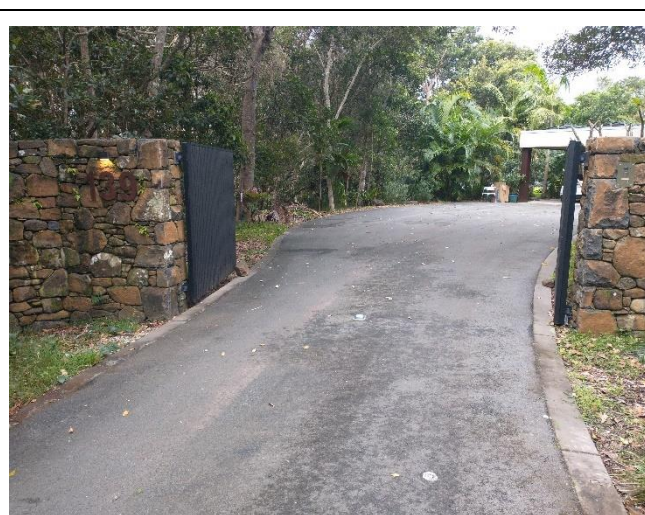


Photo 2. Entrance to proposed Lot 3 from SP81554, 'Pavilions'. View northeast (dwelling carport is in far right of photo).



Photo 3. View northwest to boundary for



Photo 4. View northeast to boundary for

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proposed Lot 3, from driveway to Lot 3 (within 'Pavilions').	proposed Lot 3, from driveway to Lot 3 (swimming pool is in far right of photo)
 <p>Photo 5. Access from Broken Head Reserve Road to proposed Lot 3 (access is via SP81554 'Pavilions').</p>	 <p>Photo 6. Access from Taylors Lake Road to proposed Lot 2.</p>
 <p>Photo 7. Access from Broken Head Reserve Road to proposed Lot 4</p>	

2. SUMMARY OF REFERRALS

Referral	Issue
Development Engineer	No objections subject to conditions.

Referral	Issue
Natural Resource Planner	No objections subject to conditions.
Rural Fire Service (100B)	Bush Fire Safety Authority and General Terms of Approval issued.
Department of Planning & Environment	Secretary's concurrence may be assumed by Council.
Developer contributions	No objections, no contributions.

3. SECTION 4.14 – BUSH FIRE PRONE LAND

Under section 4.47 of the Act, being integrated development, Council must obtain from each relevant approval body the general terms of any approval proposed to be granted by the approval body in relation to the development. The development requires an authorisation under section 100B of the Rural Fires Act 1997 in respect of bush fire safety of subdivision of land. The development application was referred to the NSW Rural Fire Service, which provided a bush fire safety authority and general terms of approval for the proposed development (E2021/113840), which are reflected in the Recommendation of this Report below.

4. SECTION 4.15C – MATTERS FOR CONSIDERATION – DISCUSSION OF ISSUES

Having regard to the matters for consideration detailed in Section 4.15(1) of the Environmental Planning & Assessment Act 1979 (EP&A Act), the following is a summary of the evaluation of the issues.

State Environmental Planning Instruments (SEPP)

Considerations	Satisfactory	Unsatisfactory
<p><i>SEPP (Resilience and Hazards) 2021</i></p> <p>Consideration:</p> <p>The application for subdivision does not propose a change of use (or purpose) for the land. The land is identified in Council's GIS as contaminated, but that remediation is not required (c.4.6).</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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Considerations	Satisfactory	Unsatisfactory
<p>The eastern portion of the property is mapped as either coastal wetland or coastal wetland proximity area and a smaller area of the east of the property is also mapped as littoral rainforest and littoral rainforest proximity area. The proposed subdivision is designated development as the property includes mapped coastal wetland and littoral rainforest (cl.2.7(1)(d) and (2)). The Department of Planning Industry and Environment confirmed they had no specific requirements for the Environmental Impact Statement (EIS)(E2021/94373). The proposed subdivision will protect the coastal wetland and littoral rainforest provided provisions allowing clearing of vegetation allow property boundaries do not apply to the proposed community title lot boundaries (particularly the Lot 1/Lot 2 and Lot 1/Lot 3 boundaries). The majority of the subject property is mapped as coastal environment area, the eastern portion is mapped as coastal use area. The proposed subdivision does not require any building work so will have no physical impact on any of the matters listed for these areas (cl. 2.10 and 2.11). Council's Natural Resource Planner made the following in relation to this matter:</p> <p><i>The application does not propose any new works. It is understood that no new clearing entitlements (e.g., the Rural Boundary Clearing Code) will be created by the subdivision because the existing restriction on use instrument prohibits any clearing or biodiversity impacts outside of the development sites and APZs.</i></p>		
<p>SEPP (Biodiversity and Conservation) 2021</p> <p>Consideration: Determination of this consent must be consistent with Council's approved Byron Coast Comprehensive Koala Plan of Management (BCKPoM)(cl.4.8). The consolidation and continued implementation of the approved Vegetation Management Plans (VMPs) for the site is considered to be consistent with the relevant provision of the BCKPoM.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

4.2A Byron Local Environmental Plan 2014 (LEP 2014)

In accordance with LEP 2014 clauses 1.4 and 2.1 – 2.3:

- (a) The proposed development is defined in the EP&A Act (s.6.2) as subdivision of land;
- 5 (b) The land is within the PART C2 Environmental Conservation / PART SP3 Tourist - Byron LEP 2014, PART 7(f1) Coastal - Byron LEP 1988 according to the Land Zoning Map;
- (c) The proposed development is permitted with consent (cl.2.6); and
- (d) Regard is had for the Zone Objectives as follows:

Zone Objective - Zone C2 Environmental Conservation	Consideration
<ul style="list-style-type: none"> • To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values. • To prevent development that could destroy, damage or otherwise have an adverse effect on those values. 	<p>Proposal is consistent with objectives as:</p> <ul style="list-style-type: none"> • No building works are proposed as part of the application. • No new vegetation clearing entitlements will be created by the subdivision.

10

Zone Objective - Zone SP3 Tourist	Consideration
<ul style="list-style-type: none"> • To provide for a variety of tourist-oriented development and related uses. • To encourage tourist development in designated areas to reduce impacts on residential amenity in other zones. 	<p>The proposed subdivision will not prevent the use of existing and/or construction of approved tourist facilities on the property.</p>

4.1 Minimum subdivision lot size

Proposed Lots 1, 2 and 4 are less than the relevant minimum lot sizes for C2 and SP3 zoned land. However, minimum lot size requirements do not apply to community title subdivisions (sub 4(b)).

- 15 Note: Proposed lot 3 predominantly comprises land zoned 7(f1) under LEP 1988 and is considered below.

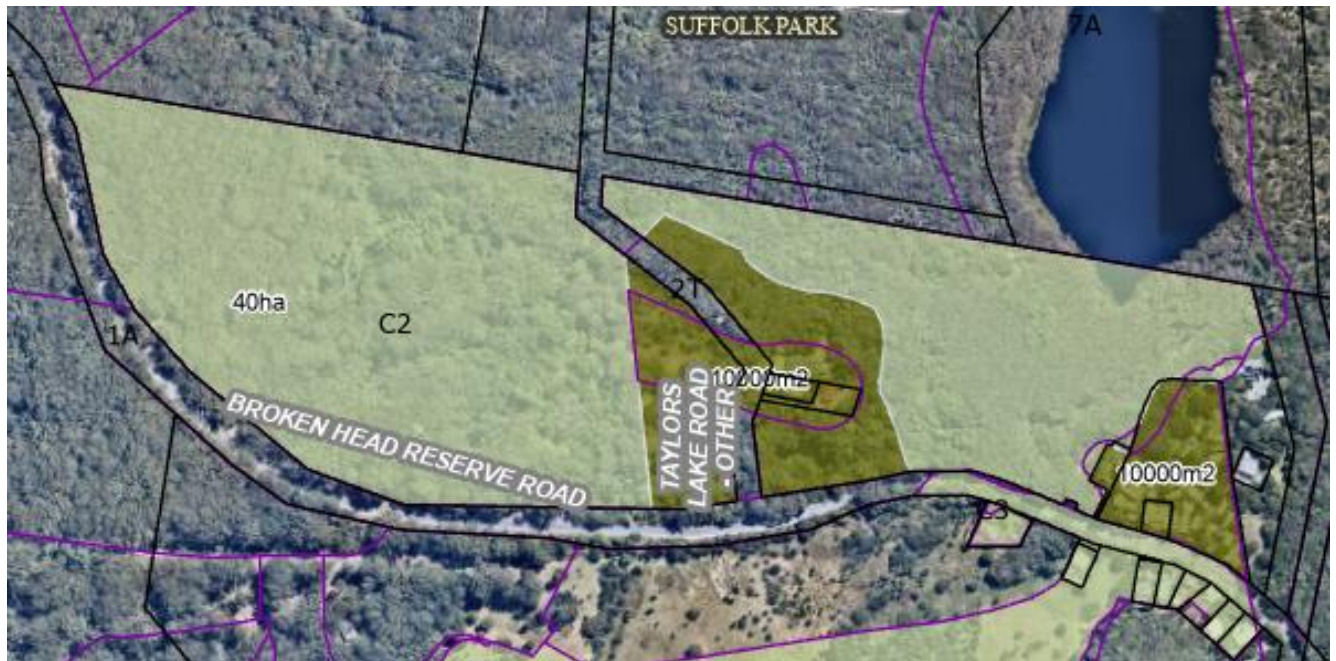
4.1AA Minimum subdivision lot size for community title schemes

- 20 This clause applies to subdivisions under the *Community Land Development Act 2021* despite clause 4.1 (see Note). The assessment of this proposal is complicated as the minimum lot size requirements do not follow the zone boundaries as is usually the case (see Figure 4). At 2465m² and 2850m², proposed Lot 2 and Lot 4 are substantially less than the minimum lot size, of 1ha, for SP3 zoned land. A written request to justify contravention of this development standard is required before development consent could

be granted (cl.4.6(3)). The applicant provided a written request to vary this standard on 22/4/22 (E2022/37087) which is considered below.

Note: This development application was lodged prior to this clause being expanded to apply also to land zoned SP1, SP3 and E3/C3 (commenced 29/10/2021). The clause does not apply to land zoned E2/C2.

5



What clause does the development not comply with and what is the nature of the non-compliance?	Further consideration, including whether the development application is recommended for approval or refusal accordingly
4.1AA Minimum subdivision lot size for community title schemes Proposed Lot 2 and Lot 4 are substantially less than the minimum lot size for SP3 zoned land.	The applicant provided a written request to vary this standard under clause 4.6 which is considered below.

10

Clause 4.6 Exceptions to Development Standards

Applicant has sought a variation to clause 4.1AA Minimum subdivision lot size for community title schemes by proposing community title lots (Proposed Lots 2, 3 and 4) comprising land zoned SP3 Tourist that are less than the minimum lot size of 1ha (cl.4.1). Proposed Lot 1, being the association property, is excluded from the operation of cl.4.1AA

15

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and the minimum lot size requirement. The lot size area and percent variation is summarised in the table below.

Lot number	Variation to lot size development standard - Area (m ²)	Variation to lot size development standard - Percentage(%)
2	7535	75.4
3	1622	16.2
4	7150	71.5

5 The applicant has submitted a written request that strict compliance with the development standard is unreasonable and unnecessary and that there are sufficient environmental grounds to vary the controls as:

- *“the community title subdivision will not create any new development opportunities.”*
- *“the community title subdivision ensures the existing tourist development pattern on the land remains in perpetuity”.*
- *“it [the subdivision] allows a form of ownership where all the owners can share equally in the value of the restored bushland on the property and use their collective resources to ensure the ongoing conservation of the land”.*

10
15 It is considered that strict compliance with the development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental grounds to vary the development standard for the following reasons:

- No tree removal or vegetation clearing is proposed.
- No new vegetation clearing entitlements will be created by the subdivision.
- A Vegetation Management Plan has been provided to guide management of environmentally valuable and/or sensitive land within the site.

Further the proposal is in the public interest having regards to the objectives of the development standard being “*to ensure that land to which this clause applies is not fragmented by ad hoc subdivisions that would create additional dwelling entitlements*”.

- 5 The size and shape of each of the proposed community title lots is designed around approved and but for Lot 4, existing development.

The concurrence of the Planning Secretary is not required. Concurrence of the Planning Secretary may be assumed in accordance with Planning Circular PS 20-002 as confirmed by the Department of Planning Industry & Environment (DPIE) on 18/8/2021.

It is recommended that the development standard can be varied in this instance.

- 10 a) The development is satisfactory having regard to the requirements outlined in clause 4.6;
- b) The development is satisfactory having regard to applicable Department of Planning, Infrastructure and Environment Circulars;
- c) The development is satisfactory having regard to relevant caselaw;
- 15 d) The DA demonstrates that compliance is with the development standard is unreasonable and unnecessary;
- e) The DA demonstrates that there are sufficient environmental planning grounds to justify contravening the standard;
- f) The DA demonstrates that that the development in the public interest; and
- 20 g) The DA demonstrates that the development is consistent with the objectives of the standard and the zone.

6.6 Essential services

Essential Services are available to service the subject land.

25 **4.2B Byron Local Environmental Plan 1988 (LEP 1988)**

In accordance with LEP 1988 clauses 5, 8 and 9:

- 30 (a) The proposed development is defined in the EP&A Act (s.6.2) as subdivision of land;
- (b) The land is within the LEP1988 7(f1) Coastal Zone according to the map under LEP 1988;
- (c) The proposed development is permitted with consent (cl.10); and
- (d) The proposed development is consistent with the relevant objectives of the Zone for the following reasons:

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Zone Objective	Consideration
<p>(a) to identify and protect environmentally sensitive coastal land,</p> <p>(b) to enable development for certain purposes where such development does not have a detrimental effect on the habitat, landscape or scenic quality of the locality,</p> <p>(c) to prevent development which would adversely affect, or be adversely affected by, coastal processes, and</p> <p>(d) to enable the careful control of noxious plants and weeds by means not likely to be significantly detrimental to the native ecosystem.</p>	<p>Proposal is consistent with objectives as:</p> <ul style="list-style-type: none"> • No building works are proposed as part of the application. • No new vegetation clearing entitlements will be created by the subdivision. • Vegetation Management Plan has been provided to guide management of environmentally valuable and/or sensitive land within the site

11 Subdivision in rural areas for agriculture etc

Proposed lot 3 (8378m²) comprises land zoned 7(f1) and is less than the minimum lot size of 40ha. A written request to justify contravention of this development standard was provided with the application and is considered below.

5 33 Development within Zone No 7 (f1) (Coastal Lands Zone)

The proposed development will not adversely affect any dune or beach, or the landscape, scenic or environmental quality of the locality or affect or be adversely affected by coastal processes, being limited to a subdivision of land with no building works.

10 Council's Natural Resource Planner has reviewed the proposal and associated Vegetation management Plans and is satisfied that adequate safeguards and rehabilitation measures are proposed to protect the environment.

36 Development adjoining wetland

15 The land to the north of the subject property is zoned 7(a) Wetlands. The proposed subdivision is unlikely to have any impact on the specified matters as no building works are proposed.

45 Provision of services

Council's Development Engineer is satisfied that services are available, or can be made available when required, for the proposed subdivision (subject to recommended conditions).

What clause does the development not comply with and what is the nature of the non-compliance?	Further consideration, including whether the development application is recommended for approval or refusal accordingly
<p>11 Subdivision in rural areas for agriculture etc</p> <p>Proposed lot 3 is substantially less than the minimum lot size for zone 7(f1) land.</p>	<p>The applicant provided a written request to vary this standard under clause 4.6 which is considered below.</p>

Clause 64A Exceptions to Development Standards

Applicant has sought a variation to clause 11 Subdivision in rural areas for agriculture etc by proposing by a community title lot (Proposed Lot 3) comprising land zoned 7(f1) Coastal that is less than the minimum lot size of 40ha. The lot size area and percent variation is summarised in the table below.

Lot number	Variation to lot size development standard - Area (m ²)	Variation to lot size development standard - Percentage(%)
3	391622	97.9

The applicant has submitted a written request that strict compliance with the development standard is unreasonable and unnecessary and that there are sufficient environmental grounds to vary the controls as:

- *“the coastal zoned land is to be retained in the one lot and will not be fragmented”.*
- *“the community title subdivision will not create any new development opportunities”.*
- *“the community title subdivision ensures the existing development pattern on the land remains in perpetuity”.*
- *“all the owners can share equally in the value of the restored bushland on the property and use their collective resources to ensure the ongoing conservation of the land”.*

It is considered that strict compliance with the development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental grounds to vary the development standard for the following reasons:

- The total area of land zoned 7(f1) within the property is ~7065m², well below the minimum lot size. The entire area of zone 7(f1) land will be included in proposed Lot 3.
- No tree removal or vegetation clearing is proposed.
- No new vegetation clearing entitlements will be created by the subdivision.
- A Vegetation Management Plan has been provided to guide management of environmentally valuable and/or sensitive land within the site.

The development standard does not have any objectives. Consequently, proposal is not contrary to public interest in relation to the objectives of the development standard.

The concurrence of the Planning Secretary is not required. Concurrence of the Planning Secretary may be assumed in accordance with Planning Circular PS 20-002 as confirmed by the Department of Planning Industry & Environment (DPIE) on 18/8/2021.

It is recommended that the development standard can be varied in this instance.

- a) The development is satisfactory having regard to the requirements outlined in clause 64A;
- b) The development is satisfactory having regard to applicable Department of Planning, Infrastructure and Environment Circulars;
- c) The development is satisfactory having regard to relevant caselaw;
- d) The DA demonstrates that compliance with the development standard is unreasonable and unnecessary;
- e) The DA demonstrates that there are sufficient environmental planning grounds to justify contravening the standard;
- f) The DA demonstrates that the development is in the public interest; and
- g) The DA demonstrates that the development is consistent with the objectives of the zone.

4.3 Any proposed Instrument that has been the subject of public consultation and has been notified to the consent authority

No proposed instruments were identified that are relevant to this application.

4.4A Byron Shire Development Control Plan 2014 (DCP 2014)

B1: Biodiversity

The subject property contains a number of mapped 'red flag' biodiversity areas however, the application is generally consistent with the objectives of this chapter as:

- No new building works are proposed;
- No new/additional clearing entitlements (e.g., the Rural Boundary Clearing Code) will be created by the subdivision; and
- The existing vegetation management plans for the property will continue, albeit in a consolidated format.

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B3: Services

As noted above, Council's Development Engineer is satisfied that essential services are available, or can be made available when required, for the proposed subdivision (subject to recommended conditions). Servicing was addressed in the assessment of the individual development applications for the dwellings/tourist accommodation on the proposed community title lots.

B4: Traffic Planning, Vehicle Parking, Circulation and Access

Council's Development Engineer is satisfied that vehicular access, parking and circulation for the proposed subdivision is adequate (subject to recommended conditions) particularly as these matters were previously addressed in the assessment of the individual development applications for the dwellings/tourist accommodation on the proposed community title lots.

B5: Providing for Cycling

It is not reasonable to require the development to facilitate cycling when there is currently no provision for cycling along Broken Head Reserve Road (B5.2.2 - 4).

B7: Mosquitoes

Provision of buffers between housing and mosquito breeding areas is difficult in this instance as the subdivision is of existing and/or approved residential and tourist development. The proposed subdivision does not require building and/or stormwater management works that would trigger additional requirements under this chapter.

C2: Areas Affected by Flood

Council's Development Engineer assessed the development in relation to flood risk/impacts and noted that the "*Eastern section of Lot 1 and Lot 3 are subject to flooding. Lot 1 is proposed as neighbourhood lot and the flooding of the existing dwelling inside Lot 3 was conditioned as part of DA10.2007.593.1*".

C3: Visually Prominent Sites, Visually Prominent Development and View Sharing

Being located "wholly or partly within the coastal zone", the subject property is a visually prominent site, and the proposed subdivision is visually prominent development. As the proposed development does not involve building works and require tree or vegetation removal, the development is not likely to create adverse visual impacts and consequently provision of a Visual Impact Statement is not warranted.

D6: Subdivision

As the subdivision relates only to creating lots around existing/approved development, detailed consideration of the subdivision design guidelines is not warranted (D6.2.1) but for item 15. Strata Title, Community Title and Stratum Subdivision. Although the proposed lots do not meet minimum lot size requirements, they are consistent with the intent of this clause in that:

- Minimum lot sizes should be based on the development footprint; and
- *Community Title Lots must include sufficient area to accommodate the approved development unit, together with any ancillary area.*

Other provisions of this Chapter are not strictly relevant to this DA due to the zoning however, a vegetation management plan and draft neighbourhood management statement have been provided previously or with the application (D6.3.5). Water, wastewater and bush fire management have been addressed under the previously assessed, individual dwelling/tourist accommodation DAs.

4.4B Byron Shire Development Control Plan 2010 (DCP 2010)

The proposal has also been assessed under Byron DCP 2010 for those areas of the property still covered by the Byron LEP 1988 in relation to relevant subdivision, stormwater management, flood risk/impacts, coastal erosion and vehicle circulation and parking and is satisfied relevant provisions have been addressed or can be addressed subject to recommended conditions. Only proposed lots 1 and 3 are in a flood risk area and/or coastal erosion zone. Proposed lot 1 is the community lot with no development approved or proposed. A flood planning level and use restriction in relation to coastal erosion have been specified in conditions in the DA for development on proposed lot 3. The subdivision will not create vacant land capable of new (i.e., not previously approved) residential development (J2.6).

The proposal is considered acceptable in terms of DCP 2010

4.5 Environmental Planning & Assessment Regulation 2000 Considerations

The proposal raises no issues under the relevant EPA Regulations 2000.

4.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

Impact on:	Likely significant impact/s?
Natural environment	No. The proposal will not have a significantly adverse impact on the natural environment of the locality.
Built environment	No. The proposal will not have a significantly adverse impact on the built environment of the locality.
Social Environment	No. The proposal will not have a significant social impact on the locality.
Economic impact	No. The proposal will not have a significant economic impact on the locality.

4.7 The suitability of the site for the development

The site is a serviced (or capable of being serviced when required), has manageable constraints and is suitable for the proposed development.

5

4.8 Submissions made in accordance with this Act or the regulations

The development application was publicly exhibited

There were **One (1)** submissions made on the development application:

- 10
- Nil (0) For
 - One (1) Against

4.9 Public interest

The proposed development is unlikely to prejudice or compromise the public interest or create an undesirable precedent.

15 5. DEVELOPER CONTRIBUTIONS

5.1 Water & Sewer Levies

Section 64 levies will be payable.

5.2 Developer Contributions

No Developer Contributions will be required.

20 6. CONCLUSION

This application seeks approval for a community title subdivision consisting of three (3) community title lots and one (1) neighbourhood property.

25 Proposed Lot 2 and Lot 4 are substantially less than the minimum lot size, for SP3 zoned land and proposed lot 3 comprises land zoned 7(f1) and is also substantially less than the minimum lot size for this zone. Although the variations sought to minimum lot size are significant, they are not unreasonable as discussed in the body of this report.

The application appropriately addresses the relevant constraints applying to the site and is recommended for approval subject to the conditions attached to this report.

STAFF REPORTS - INFRASTRUCTURE SERVICES

Report No. 13.15 Delineation of Byron Bay Beaches

Directorate: Infrastructure Services

5 **Report Author:** Malcolm Robertson, Team Leader Open Space
Andrew Erskine, Open Space Technical Services Officer

File No: I2022/278

Summary:

10 A long-term resident identified anomalies in the naming of beaches in the Byron Bay embayment. Council requested staff provide a report seeking to clearly delineate geographical boundaries and names for beaches within the Shire.

15 Few of the commonly used beach names shire-wide have been gazetted and that delineation of where they start, and finish is only vaguely defined. Staff are now recommending that a community engagement process be initiated through public exhibition to allow for Council consideration of official names.

RECOMMENDATION:

20 **That Council:-**

1. Approves the proposed refinement of mapping on public exhibition for 28 days; and
2. Requests a further report on the resulting community feedback generated, for consideration of agreed naming.

25 **Attachments:**

- 1 Beach Mapping - Combined Maps, E2022/47577 

30

Report

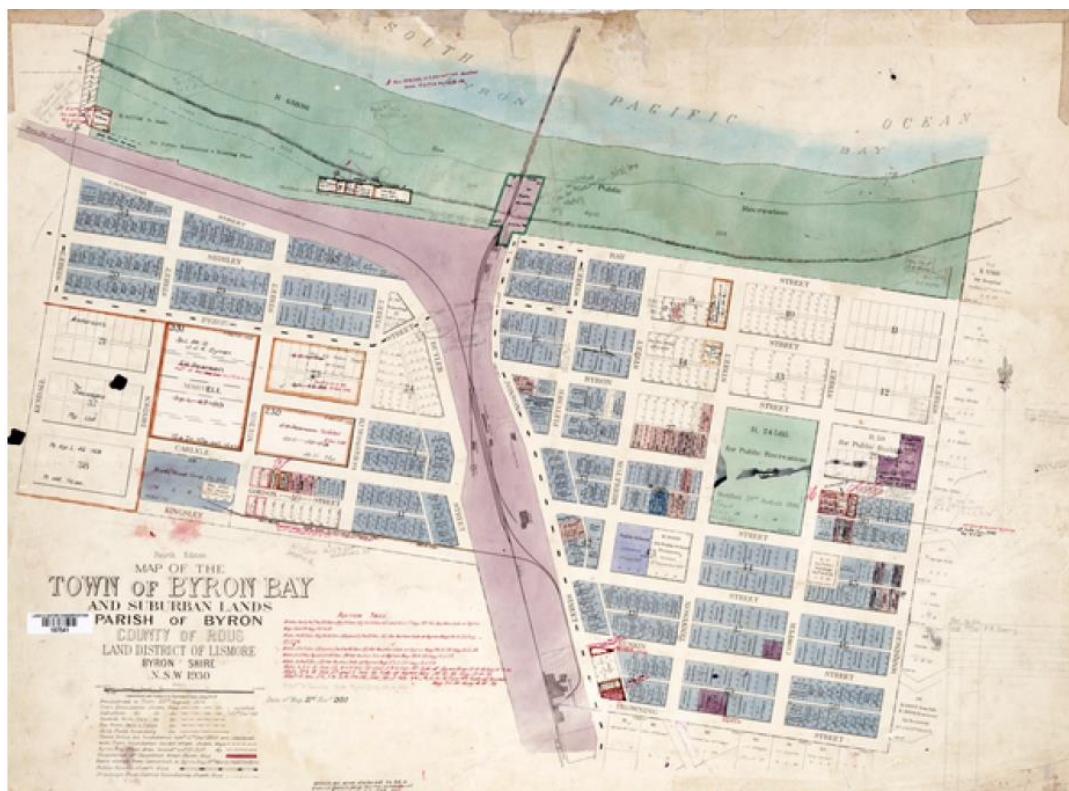
A long-term Byron resident has identified anomalies in the naming of beaches in the Byron Bay embayment. Upon investigation it was found that few of the commonly used beach names shire-wide have been gazetted and that delineation of where they start, and finish is only vaguely defined. Where beaches have been gazetted by the Geographical Names Board (GNB) the coordinates have been found to be inaccurate.

Beaches bound by headlands such as appear at Broken Head are easy to identify but the long beaches in the north don't have such geological features to contain them. This report seeks to define the names and extent of our beaches based upon historical material and where this is not available upon the most common identifiers used by emergency responders and locals. These non-gazetted names should be proposed for adoption through public exhibition and then forwarded by Council to the GNB for formalisation.

Where a beach bears a gazetted name that is unfamiliar to us such as Crabbes Creek Beach (between New Brighton and South Golden Beach) a new name could be considered. GNB encourages the use of indigenous names when not memorialising a particular person, event, or geographic feature.

Central to this investigation is that in a historic context the name Main Beach was applied to the uninterrupted body of sand that extended from Massinger St in the East to Kendall St in the West. This was a Reserve (R82000 DP729057) gazetted in 1930 (in today's map appears as Parcel 270515 Lot18 DP1269368).

Figure 1 : Parish map from 1930 prior to the construction of the Jonson St carpark showing an unbroken Main Beach.



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In 1888 the first of two jetties was built extending seaward from the end of Jonson St; despite this infrastructure the beach appears to have retained its uniform arc. Use of the 'Old' Jetty was discontinued in 1928 and demolished in 1947, the hard stand where the jetty had met the shore remained and was developed as a carpark with protective rock wall and groin in the 1970's. This fortified structure effectively cut Main Beach in two and it is no longer practical to refer to both sides under the same name, this is of particular importance to emergency responders such as Surf Lifesavers, Police, and Paramedics.

The general convention these days is to refer to the area on the eastern side of the Jonson St carpark to Massinger St as Main Beach and the section to the west of the carpark as Belongil Beach featuring The Wreck. Belongil Beach extends to Belongil Creek followed by the long Tyagarah Beach which extends almost to Brunswick Heads.

The section of beach from Massinger St to Palm Valley is Clarks/Clarkes Beach, the beach fronting Palm Valley is known locally as The Pass and beyond this is Wategos Beach, and then Little Wategos on the northern tip of the Cape. Of these only Clarkes Beach, Wategos, and Little Wategos are gazetted.

Older surfers may refer to the beach featuring The Wreck as Sharkies, a legacy of when blood was discharged from the Walker Abattoir through a pipe into the sea, attracting sharks. Fortunately, the abattoir is gone, and this is no longer a practice, to perpetuate Sharkies as a beach name is no longer relevant.

Tallow Beach on the western side of Cape Byron was named for the barrels of Tallow (rendered animal fat) that were scattered along the beach following the wreck of the Schooner Volunteer in 1864, it extends south to Broken Head. The northern corner of Tallow Beach sheltered somewhat by the Cape is known as Cosy Corner (origin unknown).

Beach Names of Byron Shire (refer to mapping in Attachment 1)

Gazetted	Non-Gazetted	Origin of name
Seven Mile Beach (1971)		An uninspired geographic description.
Whites Beach (1982)		The Whites residence located above Whites Beach was removed in 1980 when the property was added to the Broken Head Nature Reserve.
Brays Beach (1982)		Harry Bray lived here during the depression.
Kings Beach (1982)		Unknown
Broken Head Beach (1982)		Beach proximal to the northern side of Broken Head
Tallow Beach (1971)		Kegs of tallow (purified animal fat) littered the beach following the wreck of the Schooner Volunteer in 1864.
	Cosy Corner	Colloquial name

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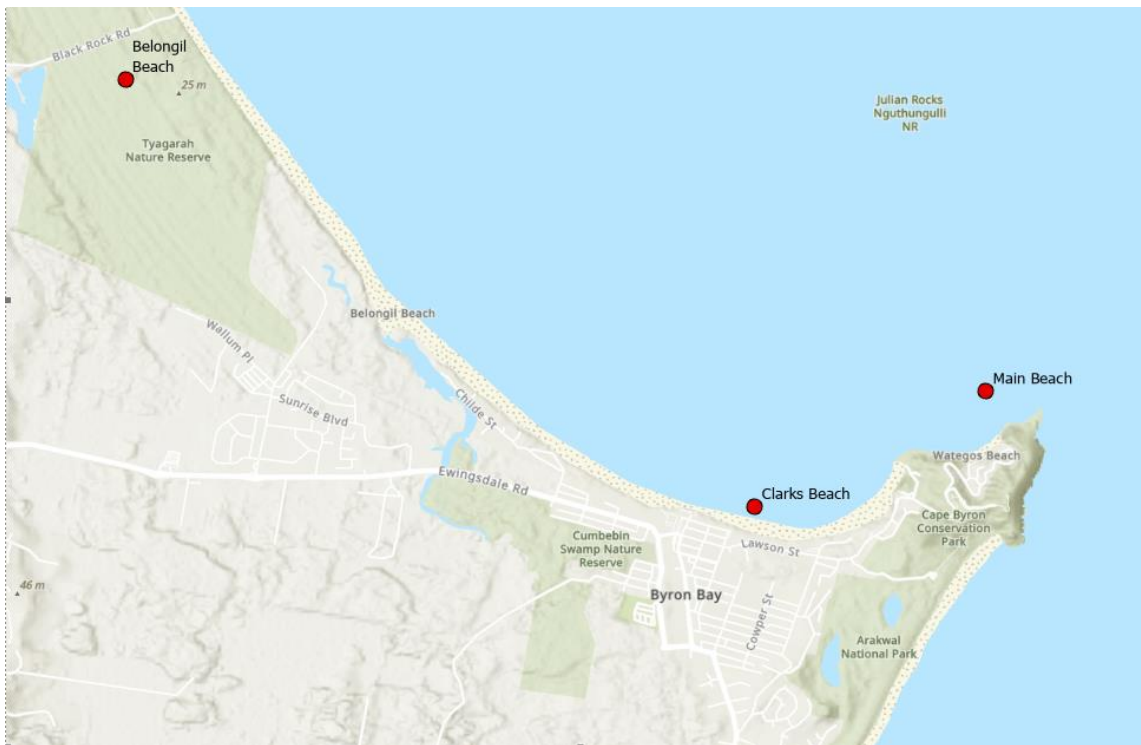
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Gazetted	Non-Gazetted	Origin of name
Little Wategos (1974)		From the 1930s the Watego family cleared and farmed land adjoining the beach.
Wategos (1974)		From the 1930s the Watego family cleared and farmed land adjoining the beach.
	The Pass	Colloquial name for the beach featuring the conspicuous geological formation present. Behind this lies Palm Valley.
Clarkes Beach (1975)		Named after the Clark family who lived here, some dispute over spelling.
Main Beach (2002)		An uninspired geographic description.
	The Wreck / Sharkies	TSS Wollongbar wrecked on beach in 1921 and is still present. Sharkies for the many sharks attracted when blood was discharged into the ocean from a local abattoir (no longer present).
Belongil Beach (2002)		A locality named after Belongil Creek. Origin of Belongil not identified.
	Tyagarah Beach	Tyagarah is named from an Aboriginal word meaning "tussocks of sharp, bladey grass" or "open grass country"
	South Beach / Brunswick Beach	Name employed by early residents of Brunswick Heads
	Torakina Beach	Unknown. A coastal town called Torakina is found in New Guinea. Possibly a shipwreck?
	North Beach/ North Wall	Name employed by early residents of Brunswick Heads, now more commonly called New Brighton.
	New Brighton	New Brighton is the name of several places around the world a reference to Brighton Beach UK?
Crabbes Creek Beach (1971)		The beach south-east of Crabbes Creek Village (general store established in 1890). Origin of name not located.
	South Golden Beach	A beachside village developed in the late 1950s
	Fern Beach	A housing development on the northern end of SGB.
	Wooyung	Named after the locality at northern end of Byron Shire. The name Wooyung is a Bundjalung word meaning slow.

Key issues

The names used for beaches in Byron Shire are a mix of historic references and colloquialisms, where the beaches start, and finish is often poorly defined, and few have been gazetted. It is considered important to adopt an accepted convention in naming to reduce potential confusion for visitors and emergency responders.

Figure 2: Current Gazetted Coordinates



As shown in Figure 2, the coordinates currently recorded by the GNB for Gazetted Beaches of Byron Shire are incorrect (see above map). When the review of beach names is complete the coordinates of where each beach starts, and finishes should be plotted by councils GIS staff and included in the submission to GNB.

When names have been ratified it will be necessary to distribute these changes to Chambers of Commerce, Media, and emergency responders to ensure future mapping and dialogue are consistent.

Options

Where a beach bears a gazetted name that is unfamiliar to us such as Crabbes Creek Beach (between New Brighton and South Golden Beach) a new name could be considered. GNB encourages the use of indigenous names when not memorialising a particular person, event, or geographic feature.

Next steps

It is recommended that the proposed refinement of mapping resulting from this study be placed on public exhibition for 28 days. At that point community feedback generated will be reported to Council for further consideration and potential adoption of agreed naming.

- 5 The adopted results would then be forwarded by Council to the Geographic Names Board for adjustment/ Gazettal.

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy
Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle, and sense of community	2.1 - Provide timely, accessible and accurate information to the community
	2.5: Encourage community appreciation of cultural vitality and diversity

10 Recent Resolutions

Resolution 21-246. Council staff to provide a future report to Council seeking to clearly delineate geographical boundaries and names for beaches within the Shire.

Legal/Statutory/Policy Considerations

- 15 As set out in the *Geographical Names Act 1966*, the Board has the following powers and functions:

- assign names to places
- approve that a recorded name of a place shall be its geographical name
- alter a recorded name or a geographical name
- determine whether the use of a recorded name or a geographical name shall be discontinued
- 20 • the application of any geographical name with regard to position, extent or otherwise
- compile and maintain a vocabulary of Aboriginal words used or suitable for use in geographical names and to record their meaning and origin
- publish a gazetteer of geographical names

- 25 The Board proactively seeks to abide by these statutory provisions through the adoption of nomenclature policies and procedures which are both nationally and internationally recognised.

Financial Considerations

Enactment of the recommendations of this report including application to the GNB can be processed by internal staff as resources permit.

Consultation and Engagement

- 5 This report included consultation with Officers of Australian Lifeguard Services, Byron Surf Lifesaving Club, Brunswick Heads Surf Club and NPWS. Websites of the GNB, Byron Bay Historical Society, Brunswick Valley Historic Association, Ocean Shores Community Association provided valuable information.

Report No. 13.16 Kolara Way Shared Path - Project Update**Directorate:** Infrastructure Services**Report Author:** Kirk Weallans, Project Engineer**File No:** I2022/535**5 Summary:**

Council has previously identified that the installation of a new pedestrian and cyclist access bridge/path across Yelgun Creek adjacent the Kolara Way Bridge on New Brighton Road, New Brighton as a priority project.

10 A report was presented at the 24 February 2022 Council Meeting regarding the insufficient available funding of \$100,000 for the project. At the time of the Council Meeting, it was suggested by staff that the available Kolara Way Shared Path funding be reallocated to the Ewingsdale Shared Path Project, another priority A project which had a construction funding shortfall. As part of the March quarterly review \$100,000 was reallocated from the Kolara Way Shared Path Project to the Ewingsdale Shared Path Project.

15 At the February Council meeting it was resolved **(22-045)** that:

1. *That the Kolara Way pedestrian bridge and shared path project be prioritised for funding to reach shovel ready status.*
2. *That Council receives a report at the March meeting that identifies potential sources of the additional funds required for this project.*

20 Following the Council meeting in February, Council Management held discussions with Transport for New South Wales (TfNSW) who confirmed that they would provide a financial contribution of \$100,000 to the Ewingsdale Shared Path Project.

25 As the Ewingsdale Shared Path has now been partly funded by TfNSW, it is proposed that \$90,000 of Council Reserve funds for the Ewingsdale Shared Path Project be reallocated to the Kolara Way Shared Path Project. This reallocation of funds would provide the Kolara Way Shared Path Project with a total funding allocation of \$169,000 and will be provided as part of the 2022/23 budget.

30 It is anticipated that a funding allocation of \$169,000 for the Kolara Way Shared Path Project should be sufficient to cover the consultant component of the project presuming market rates have not increased since quotes were obtained. Council project management costs which are anticipated to be in the order of approximately \$10,000 may result in expenditure exceeding the available budget. If this situation arises then additional budget will need to be resolved as part of a quarterly budget review. There is no project contingency based on the proposed funding allocation.

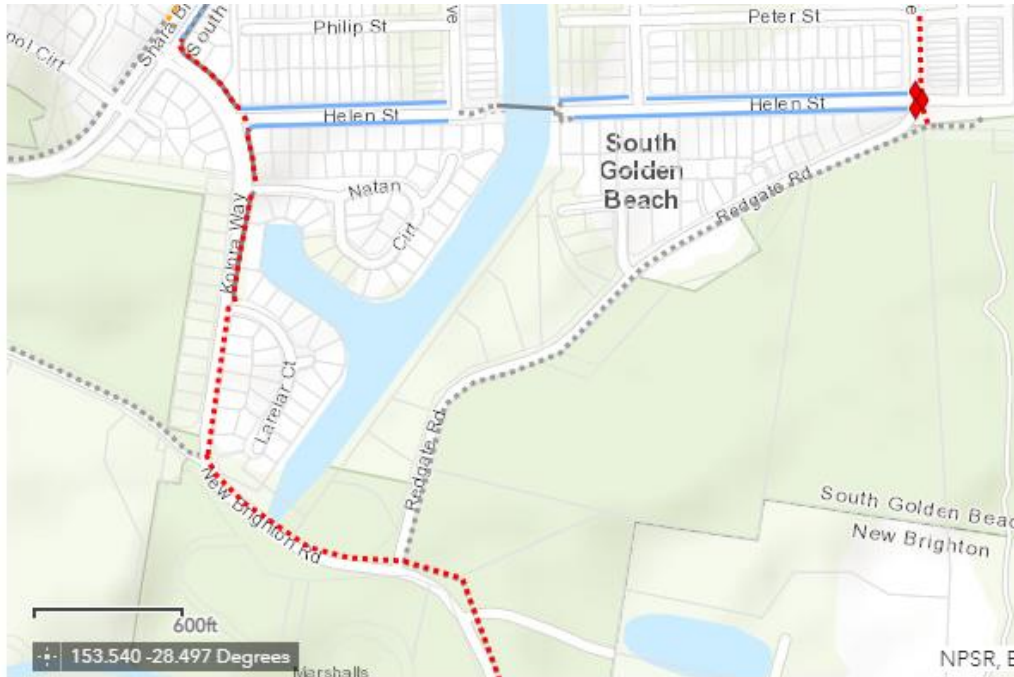
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RECOMMENDATION:

1. That Council notes the report.
- 5 2. That staff commence the detailed design and planning activities for the Kolora Way Shared Path Project on the basis that the proposed funding in the 2022/23 budget is sufficient to cover market costs relating to planning and design.

Report

Council has previously identified that the installation of a new pedestrian and cyclist access bridge/path across Yelgun Creek adjacent the Kolara Way Bridge on New Brighton Road, New Brighton as a priority project. The project is considered a priority A project as defined in Council's Pedestrian Access and Mobility Plan.



Map legend

PREDESTRIAN ACCESS & MOBILITY PLAN (PAMP)

Shared Path / Footpath Type

Priority

High

Medium

Low

Footpath
Mixed traffic
Shared Path
Crossings

Existing Path Network

Footpath
Shared Cycle Footpath

Figure 1 – Excerpt from Council's Pedestrian Access and Mobility Plan showing priority pedestrian connections in New Brighton

The objective of the project is to provide safer access across Yelgun Creek for pedestrians and cyclists of all abilities as well as enable safer access to nearby villages, schools and amenities.

Mapped Coastal Wetland exists within the proposed shared path project footprint. Impact to this wetland by the project will trigger an Environmental Impact Statement, a process which is associated with additional costs and project planning timeframes.

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In 2021/22 \$100,000 was allocated to undertake planning and design work to bring the project to shovel ready status. Quotes were invited from 10 Consultants for the detailed design, necessary investigations, and preparation of an Environmental Impact statement. Council received 2 quotes price at \$166,000 and \$172,500 ex GST to complete this works package. The quoted prices significantly exceeded Council's available budget of \$100,000 to complete this work. A report was presented at the 24 February 2022 Council Meeting regarding the insufficient available funding of \$100,000 for the project. At the time of the Council Meeting it was suggested by staff that the available Kolara Way Shared Path funding be reallocated to the Ewingsdale Shared Path Project, another priority A project which had a construction funding shortfall.

As part of the 31 December 2021 quarterly budget review it was proposed that \$20,000 from reserves be reallocated from the Kolara Way Shared Path Project to the Ewingsdale Shared Path Project. However, the anticipated reserve fund of \$20,000 through paid parking was not realised in 2021/22 and the actual funds reallocated from Kolara Way to Ewingsdale was \$10,000.

At the 31 March 2022 quarterly budget review, the Kolara Way Shared Path Budget was reduced by \$79,000, leaving \$1,000 to cover minor project related costs in 2021/22 and the \$79,000 is proposed to be carried to the 2022/23 project budget for Kolara Way.

Following the Council meeting in February, Council Management held discussions with TfNSW who confirmed that they would provide a financial contribution of \$100,000 to the Ewingsdale Shared Path Project. As a result Council Officers recommend that an additional \$90,000 be reallocated from the Ewingsdale Shared Path to Kolara Way Shared Path as part of the 2023/23 budget. This would provide the Kolara Way Shared Path Project with a total funding allocation of \$169,000 in the 2022/23 budget.

Previous Council Resolution

At the February Council meeting it was resolved **(22-045)** that:

1. *That the Kolara Way pedestrian bridge and shared path project be prioritised for funding to reach shovel ready status.*
2. *That Council receives a report at the March meeting that identifies potential sources of the additional funds required for this project.*

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
Community Objective 1: We have infrastructure, transport and services which meet our expectations	1.1: Provide a road network which is safe, accessible and maintained to an acceptable level of service	1.1.3: Prioritise road network asset renewal and upgrade programs in line with Community Solutions Panel values (SP)	1.1.3.16	Deliver Kolora Way Footpath and Bridge Upgrade

Financial Considerations

- 5 It is anticipated that the \$169,000 proposed budget for the Kolora Way Shared Path Project be sufficient to cover the consultant component of the project presuming market rates have not increased since quotes were obtained. Council project management costs which are anticipated to be in the order of approximately \$10k may result in expenditure exceeding the available budget. If this situation arises then additional budget will need to be resolved as part of a quarterly budget review. There is no project contingency based on the proposed funding allocation.
- 10

Report No. 13.17 Part Myocum Road Closure to progress Land Acquisition Matters for the purpose of widening and realignment of Myocum Road

Directorate: Infrastructure Services

5 **Report Author:** Deanna Savage, Roads and Property Officer

File No: I2022/556

Summary:

10 This report is being presented to Council to endorse the closure of parts of Council road reserve, Myocum Road adjoining Lot 1 DP 1138652 and Lot 127 DP 405405 and the dedication of land part Lot 4 DP 775335 as road.

As per Crown Land determination the road/land will vest in Council upon closure, and it is proposed to sell the land to the adjoining landowner of Lot 1 DP 557721. (*Attachment 1 E2022/50581*)

15

RECOMMENDATION:

That Council:

- 20 1. **Endorses the closure of part road reserve adjoining Lot 1 DP 1138652 and Lot 127 DP 405405, and dedication of land being part Lot 4 DP 775335 as road as highlighted in the report.**
- 25 2. **Authorises the execution of all documents necessary to affect the road closure and dedication of land as road including but not limited to contracts for the acquisition of land and consolidations.**

Attachments:

- 30 1 Department of Planning and Environment response to Council road closure proposal 12188 - parts of Myocum Road, E2022/50581 

Report

At Council's Ordinary Meeting on 22 April 2021, Council considered Report 13.21 I2021/477 and noted that to provide safety for road users at the intersection of Possum Shoot Road and Kennedys Lane, Myocum Road it is required to be re-aligned to the west of Possum Shoot Road so that adequate sight distance can be achieved.

At Council's Ordinary Meeting on 5 August 2021, Council considered Report 15.2 I2021/1129 resulting in Resolution **21-269** outlining land acquisition matters and agreements made with adjoining landowners.

This road closure forms part of existing road reserve that is no longer required and is needed to action Resolution 21-269. The blue area in figure 1 below is part of a land swap agreement with the adjoining landowner Lot 1 DP 1138652 and the area red will be sold to the adjoining landowner Lot 127 DP 405405.

The yellow highlighted area is land to be dedicated as road for the new road corridor.



Figure 1 – Showing the old road alignment

- Road Closure
- Road Closure
- Land to be dedicated as road



Figure 2 – Showing new road corridor

Once the dedication of land as road and the road closures are finalised **Figure 2** shows the outcome and new road corridor.

5 Why is this required?

Road Closure Process:

10 Council identified as per the **Roads Act 1993** (*Part 4 Division 3 Closing of council public roads by council 38A When council may close council public road*), that this part road area would not be reasonably required as a road for public use (whether for present or future needs) as Council was undertaking road widening, realignment, and safety upgrade of a 500m section of Myocum Road. This part road area is not required to provide continuity for an existing road network, and the part road does not impede vehicular access to a particular land.

15 A Notice was placed in The Byron Echo on 6 April 2022 and on Council's website and notifications went out to adjoining landowners and all authorities advising the closure of part Myocum Road adjoining 385 Myocum Road Lot 1 DP 1138652 and part Myocum Road adjoining 325 Myocum Road Lot 127 DP 405405 as shown in **Figure 1** as per **Roads Act 1993** *Part 4 Division 3 Closing of council public roads by council 38B Notification of proposal to close council public road*.

20 There was a 28-day submission period with one submission of support for the closure.

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
Community Objective 1: We have infrastructure, transport and services which meet our expectations	1.1: Provide a road network which is safe, accessible and maintained to an acceptable level of service	1.1.3: Prioritise road network asset renewal and upgrade programs in line with Community Solutions Panel values (SP)	1.1.3.7	Deliver Myocum Road Safety and Upgrade Program

Recent Resolutions

- Res 21-218
- Res 21-269

Legal/Statutory/Policy Considerations

Roads Act 1993

Part 4 Closing of public roads

Division 3 Closing of council public roads by councils38A When council may close council public road

A council may propose the closure of a council public road for which it is the roads authority if:

(a) the road is not reasonably required as a road for public use (whether for present or future needs), and

(b) the road is not required to provide continuity for an existing road network, and

(c) if the road provides a means of vehicular access to particular land, another public road provide lawful and reasonably practicable vehicular access to that land.

38B Notification of proposal to close council public road

(1) A council that is proposing to close a council public road must cause notice of the proposal:

(a) to be published in a local newspaper, and

(b) to be given to:

(i) all owners of land adjoining the road, and

(ii) all notifiable authorities, and

(iii) any other person (or class of person) prescribed by the regulations.

5 (2) The notice:

(a) must identify the road that is proposed to be closed, and

(b) must state that any person is entitled to make submissions to the council with respect to the closing of the road, and

10 (c) must indicate the manner in which, and the period (being at least 28 days) within which, any such submission should be made.

38C Public submissions and formal objections

(1) Any person may make submissions to the council with respect to the closing of the road in the manner and within the period specified in the notice published under section 38B.

15 (2) Without limiting subsection (1), a notifiable authority in relation to the road may include a statement in the authority's submission to the effect that the authority formally objects to the closing of the road. The authority may withdraw the objection any time by written notice given to the council.

Note:

20 If a formal objection is made, section 38D (2) provides that the road may not be closed until the objection is withdrawn by the authority or set aside by the Land and Environment Court under this section.

(3) The council may appeal to the Land and Environment Court against a formal objection made by a notifiable authority against the closing of the road.

25 (4) On any such appeal, the Land and Environment Court may:

(a) affirm the objection, or

(b) set aside the objection.

(5) In deciding whether to affirm or set aside the objection, the Land and Environment Court must have regard to the public interest.

30 **38D Decision of proposal**

(1) After considering any submissions that have been duly made with respect to the proposal, the council may, by notice published in the Gazette, close the public road concerned.

(2) However, a council public road may not be closed:

- 5 (a) in the case of a classified road—unless RMS consents to the closure of the road, or
- (b) in the case where a notifiable authority has formally objected under section 38C to the closing of the road—until the objection is withdrawn by the authority or set aside by the Land and Environment Court under that section.

38E Effect of notice of closure

- 10 (1) On publication of the notice closing the council public road concerned:
- (a) the road ceases to be a public road, and
- (b) the rights of passage and access that previously existed in relation to the road are extinguished.
- (2) The land comprising a former road:
- 15 (a) in the case of a public road that was previously vested in a council (other than a public road in respect of which no construction has ever taken place)—remains vested in the council, and
- (b) in any other case—becomes (or, if previously vested in the Crown, remains) vested in the Crown as Crown land.

38F Appeals to Land and Environment Court against closure decision

- (1) A person referred to in section 38B (1) (b) may appeal to the Land and Environment Court against the closure of a council public road by a council.
- (2) On any such appeal, the Land and Environment Court may:
 - 5 (a) affirm the closure, or
 - (b) set aside the closure.
- (3) Section 38E is taken never to have applied to a closure that is set aside.
- (4) To avoid doubt, an appeal under section 38C does not prevent an appeal under this section.

10 **Roads Act 1993**

Council may dedicate certain land as a public road

16 Council may dedicate certain land as a public road

- (1) This section applies to land that is set aside for the purposes of a road left in a subdivision of land effected before 1 January 1907 (the date of commencement of the Local Government Act 1906) or in a plan of subdivision that was registered by the Registrar-General before 1 January 1920 (the date of commencement of the Local Government Act 1919).
15
- (2) The council of the local government area within which such land is situated may, by notice published in the Gazette, dedicate the land as a public road.
- (3) On the publication of the notice in the Gazette--
20
 - (a) the land described in the declaration becomes free of all trusts, restrictions, dedications, reservations, obligations and interests, and
 - (b) the land is dedicated as a public road.
- (4) No compensation is payable to any person with respect to any loss or damage arising from the operation of this section.
25
- (5) Land may not be dedicated as a public road under this section if the Land and Environment Court has made a declaration under section 17 to the effect that the land may not be so dedicated or if an application for such a declaration is pending before that Court.

Financial Considerations

All costs associated with the road closure and dedication have been budgeted for within the project and the proposed offer plus all survey and valuation costs falls within the budget.

5 Consultation and Engagement

As per the Roads Act 1993 requirements, the necessary notices and submissions period were undertaken, and no objections were received by any of the services.

- 10 A Notice was placed in The Byron Echo on 6 April 2022 and on Council's website and notifications went out to adjoining landowners and all authorities advising the closure of parts of Myocum Road.

Report No. 13.18 First Sun Holiday Park Rail Land

Directorate: Infrastructure Services

Report Author: Pattie Ruck, Open Space Facilities Coordinator

File No: I2022/559

5 Summary:

This report seeks to secure long-term tenure of Rail Land adjoining First Sun Holiday Park currently owned by Transport for NSW. This land is used by Council for the purpose of the First Sun Holiday Park.

10 Council Resolution is required to initiate the compulsory acquisition pathway and to ensure the land is classified correctly prior to acquisition.

RECOMMENDATION:

15 That Council:

1. **Makes application to the Minister and the Governor for approval to acquire land described as part of Lot 4729 DP1228104 by compulsory process under section 186(1) of the *Local Government Act 1993* for the purpose of a caravan park and in accordance with the requirements of the *Land Acquisition (Just Terms Compensation) Act 1991*.**
2. **Upon acquisition of the land described as part of Lot 4729 DP1228104 classifies this land as Operational Land.**

25

Report

First Sun Holiday Park leases a small portion of land adjoining the Rail corridor from Transport for NSW (TfNSW), as shown in Figure 1. Ongoing use of this parcel of land contributes to the income generated by the holiday park and subsequently towards Council operational projects and services.

The lease for this land is historically renewed every five years however the last lease expired in 2020. Lease renewal was initiated in 2020 but is not being progressed with any urgency by TfNSW, with Council on a holding over clause.

In June 2020, the executive team supported investigation of alternate options to secure long-term tenure and commencement of direct negotiations with TfNSW on these options. Staff are now continuing to pursue lease renewal, and the same time are progressing application to purchase the land from TfNSW. The lack of progress via these pathways highlights the need for Council to initiate the last remaining option of Compulsory Acquisition.

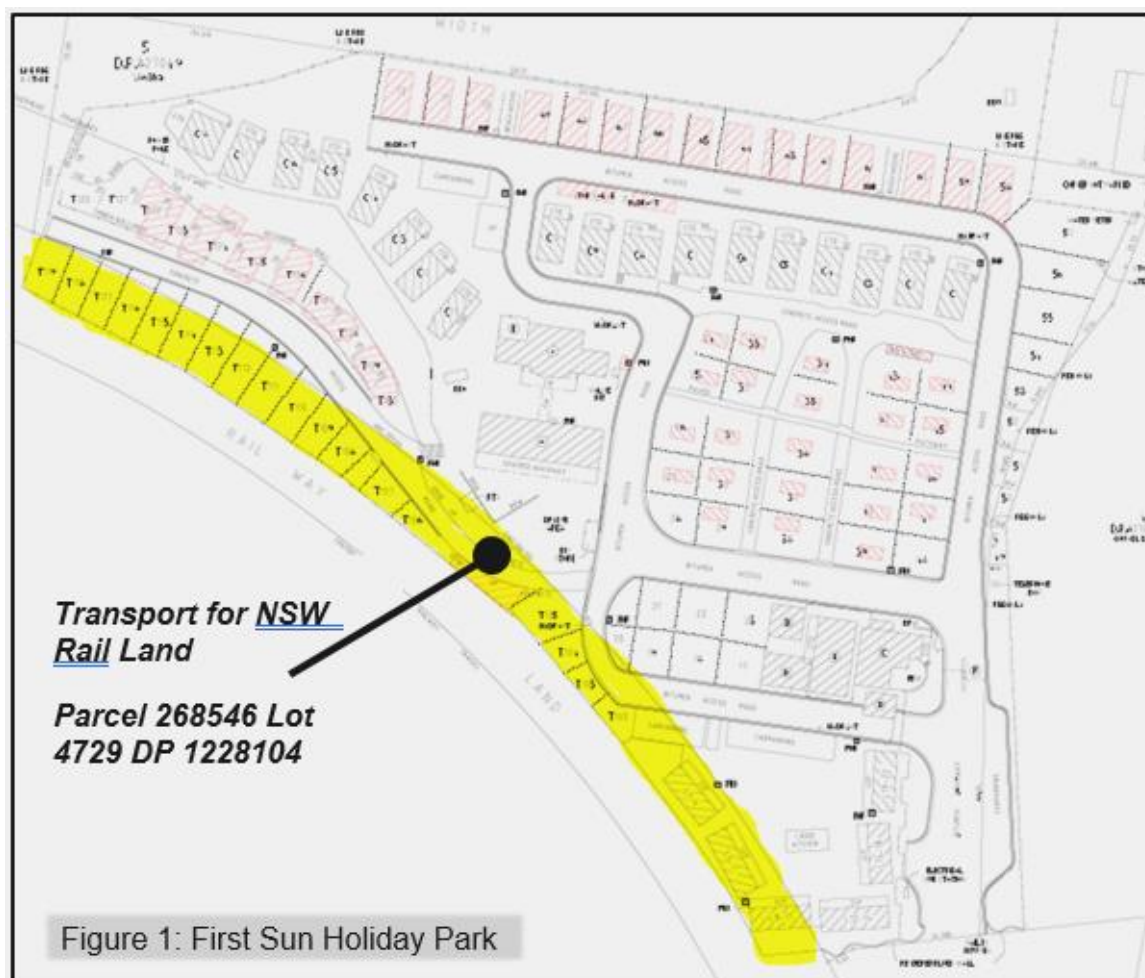
Compulsory Acquisition is available under the Land Acquisition Act 1991. The compulsory acquisition process can run in parallel with current processes seeking lease renewal and application to purchase.

Key reasons to pursue compulsory acquisition include ensuring continuation of the historic and ongoing use of this land by Council for the First Sun Holiday Park. There is significant Council infrastructure upon the land, and revenue generated contributes towards Council being "Fit for the future".

Ownership of this land also allows Council:

- Ability to broadens Park opportunities
- Confidence to invest and improve its own infrastructure
- Increased compliance with regulations including;
 - safety considerations
 - site size requirements
 - dwelling separation requirements
 - site and dwelling setbacks
 - road access, widths and car spaces
 - all abilities infrastructure
 - overall amenity of the park

To initiate the Compulsory Acquisition process Council needs to make application to the Minister for consent, via the Office of Local Government. A Council resolution is required as part of the application to the Office of Local Government and Under the Local Government Act, Council also must classify the land by resolution before acquisition.



Options

There are two broad options for Council to acquire the subject land owned by Transport for NSW but used by Council for the purpose of the First Sun Holiday Park:

- 5 1. Transport for NSW sells Council the land; or
2. Council compulsorily acquires the land.

Councils staff initiated the Option 1 application process in 2020, but there has been little headway to date. Option 2 to secure the land through Compulsory Acquisition under the Land Acquisition Act 1991 can be progressed simultaneously with both the lease renewal process and application to purchase.

Next steps

Compulsory Acquisition application requires the Minister and Governors' approval. This process could take up to two years, based on recent Council applications to the Minister.

Council support through resolution is required to initiate the compulsory acquisition pathway. Under the LG Act, Council has to classify the land by resolution before it acquires or within three months from acquiring it. If this step is not completed the land is

automatically classified as community land which restricts its current use as a caravan park.

Whatever the acquisition process, any transfer of land to Council can only be finalised through a further Council resolution.

5 **Strategic Considerations**

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
Community Objective 1: We have infrastructure, transport and services which meet our expectations	1.2: Provide essential services and reliable infrastructure which meet an acceptable community standard	1.2.6: Optimise Council's property portfolio (SP)	1.2.6.6	Manage approval to operate licence conditions for First Sun and Suffolk Holiday Parks
Community Objective 1: We have infrastructure, transport and services which meet our expectations	1.2: Provide essential services and reliable infrastructure which meet an acceptable community standard	1.2.6: Optimise Council's property portfolio (SP)	1.2.6.7	Deliver adopted capital works program for First Sun Holiday Park

Legal/Statutory/Policy Considerations

Compulsory Acquisition Pathway is available to Council under the Land Acquisition Act 1991.

- 10 Operational classification of land required prior to acquisition as per LG Act.

Financial Considerations

Prior to finalisation of a land purchase, a cost/benefit analysis will be completed to ensure viability.

Consultation and Engagement

- 15 Consultation undertaken with Project Working Group, Executive Team, Planning, Finance, Legal and Manager Open Space and Facilities.

Report No. 13.19 Tender 2021-1247 - Panel of Providers - Provision of Plumbing, Electrical, General Building & Maintenance Services

Directorate: Infrastructure Services

5 **Report Author:** Joshua Winter, Capital Works Engineer
Cameron Clark, Manager Utilities

File No: I2022/592

Summary:

10 On 31 August 2021, the General Manager, under delegated authority, approved the use of the open tender method to establish a panel of providers under Contract 2021-1247 Panel of Providers – Provision of Plumbing, Electrical, General Building and Maintenance Services.

15 The Request for Tender was advertised through Vendorpanel and on Council's website from 24 November 2021 to 17 December 2021. Tenders were received from the following organisations:

- Bishton Group Pty Ltd
- Concept Engineering Services Pty Ltd
- Eximm Property Services Pty Ltd
- Inglis Fire & Safety
- 20 • Northern Rivers Fencing
- O'Brien Electrical & Plumbing Lismore
- Qube Electrical
- Rob War Electrical Services Pty Ltd
- Rohan Property Maintenance Pty Ltd
- 25 • SS Irrigation
- Stralis Energy Pty Ltd
- Thearle Electrical

30 Tenders have been assessed in accordance with the provisions of the Local Government (General) Regulations 2005. This report summarises the background and assessment of the tenders and provides a recommendation to establish a panel of providers.

RECOMMENDATION:

- 5
1. That Council establishes a panel of providers inclusive of each of the organisations recommended in the Tender Evaluation Report (Confidential Attachment 1 - E2022/29277).
 2. That Council makes public its decision, including the names of the successful tenderers, in accordance with Clause 169(4) and Clause 178 of the Local Government (General) Regulation 2021.

Attachments:

- 10
- 1 Confidential - 2021-1247 - Tender Evaluation Report - Provision of Plumbing, Electrical, General Building & Maintenance Services - Signed by Panel, E2022/29277

Report

On 31 August 2021, the General Manager, under delegated authority, approved the use of the open tender method to establish a panel of providers under Contract 2021-1247 Panel of Providers – Provision of Plumbing, Electrical, General Building and Maintenance Services.

Council has a vast building portfolio that from time to time requires works and maintenance to manage these assets responsibly. The intent of this tender is to establish a panel of providers that are competent and able to assist Council in this asset management. It is anticipated that through establishing this panel of providers, Council will be able to readily engage competent resources on an as required basis to provide the support it needs. An engagement that is over tender threshold or of greater risk could be selectively tendered to suppliers established on this panel.

The Request for Tender sought responses from proponents to provide Plumbing, Electrical, General Building and Maintenance Services throughout Council's building portfolio.

The Contract is expected to commence in July 2022 for a period of three (3) years with an option to extend the contract for further period of two (2) years at Council's sole discretion.

The Contract will be managed by Manager Utilities.

Tenders were advertised as follows:

Vendorpanel & Council website: 24 November 2021 to 17 December 2021.

An Evaluation Panel comprising of three members was formed.

Tenders closed on 17 December 2021 and tenders were received from the following proponents:

- Bishton Group Pty Ltd
- Concept Engineering Services Pty Ltd
- Eximm Property Services Pty Ltd
- Inglis Fire & Safety
- Northern Rivers Fencing
- O'Brien Electrical & Plumbing Lismore
- Qube Electrical
- Rob War Electrical Services Pty Ltd

- Rohan Property Maintenance Pty Ltd
- SS Irrigation
- Stralis Energy Pty Ltd
- Thearle Electrical

5 Tenders were evaluated by the Evaluation Panel in accordance with the following evaluation criteria:

Mandatory criteria:

- a) Tenderer must have a valid Australian Business Number.
- b) Substantial conformance to Conditions of Contract and Statement of Requirements.
- 10 c) Workers compensation insurance for all employees.
- d) Holds, or is willing to obtain, the insurances as specified in the Statement of Requirements.
- e) Satisfactory Work Health and Safety practices.
- f) Financial capacity to undertake the contract.
- 15 g) Commitment to ethical business practice principles.

Qualitative criteria:

- a) Profile and relevant experience.
- b) Price (Schedule of Rates).

The result of the evaluation is detailed in the attached Evaluation Report.

20 **Financial Considerations**

The price basis for the contract is a schedule of rates that are utilised when Council requests work under the Contract.

Council's standard procurement process ensures that there must be sufficient funding for any works procured under this contract within the relevant budgets.

25 **Statutory and Policy Compliance Considerations**

The tendering process has been undertaken in accordance with Council's Purchasing and Procurement Policy, and the provisions of the Local Government (General) Regulation 2021.

The Local Government (General) Regulations 2021 define the options available to Council. An extract is provided below.

Local Government (General) Regulation 2021 - Reg 169

5 169 *Selective tendering method by which recognised contractors listed by council are invited to tender for particular kinds of proposed contracts*

(4) *After considering an application under this section, the council may either—*

(a) *list the applicant as a recognised contractor for some or all of the kinds of work, goods, facilities, services or property specified in the application, or*

(b) *reject the application in whole or part.*

10 **Local Government (General) Regulation 2021 - Reg 178**

178 *Acceptance of tenders*

(3) *A council that decides not to accept any of the tenders for a proposed contract or receives no tenders for the proposed contract must, by resolution, do one of the following—*

15 (a) *postpone or cancel the proposal for the contract,*

(b) *invite, in accordance with section 167, 168 or 169, fresh tenders based on the same or different details,*

(c) *invite, in accordance with section 168, fresh applications from persons interested in tendering for the proposed contract,*

20 (d) *invite, in accordance with section 169, fresh applications from persons interested in tendering for contracts of the same kind as the proposed contract,*

(e) *enter into negotiations with any person (whether or not the person was a tenderer) with a view to entering into a contract in relation to the subject matter of the tender,*

25 (f) *carry out the requirements of the proposed contract itself.*

(4) *If a council resolves to enter into negotiations as referred to in subsection (3)(e), the resolution must state the following—*

(a) *the council's reasons for declining to invite fresh tenders or applications as referred to in subsection (3)(b)–(d),*

30 (b) *the council's reasons for determining to enter into negotiations with the person or persons referred to in subsection (3)(e).*

Council's endorsement of the recommendation to establish a panel of providers as recommended in the attached Evaluation Report is sought.

Report No. 13.20 Voluntary House Raising

Directorate: Infrastructure Services

5 **Report Author:** Scott Moffett, Drainage & Flood Engineer, IS - Works - Infrastructure Planning

File No: I2022/663

Summary:

Council has applied under the Department of Planning and Environment 2022-23 Floodplain Management Grant for Voluntary House Raising funding.

10 Under this program, state government provide two thirds funding with a remaining one third contribution required. The following provides an overview of the program, draft guidelines and proposes that the landowner provides the remaining one third funding contribution.

15 A report on this subject will also be provided to the 16 June 2022 Floodplain Management Advisory Committee meeting.

RECOMMENDATION:

20 **That Council notes both the report and that any additional recommendations from the Floodplain Management Advisory Committee on the Voluntary House Raising scheme will be reported to the August Ordinary meeting of Council.**

Attachments:

25 1 BSC Voluntary House Raising Scheme - DRAFT Guidelines, E2022/29988 

Report

Each year, the NSW Government's floodplain management grants support local government to manage flood risk. The main aim of the Floodplain Management Program is to reduce the impact of flooding and flood liability on communities and reduce the damage floods cause using environmentally friendly methods.

Within this program is the opportunity to apply for Voluntary House Raising (VHR) [Floodplain management grants | NSW Environment and Heritage](#)

Council has applied for VHR, under the 2022-23, round and will continue in future years. If successful, Council will manage and administers the VHR Scheme. The outcome of Council's grant application is anticipated to be known in November 2022.

The VHR is aimed at reducing flood damage to houses by raising the habitable floor level of individual buildings, therefore, reducing the economic and social burden of flooding on the community and government.

Benefits of VHR include:

- reduced flood damage to houses and their contents
- reduced personal loss, stress and post-flood trauma
- reduced frequency of household disruption
- reduced clean up after floods
- improved safety (if isolated).

A VHR scheme is part of an overall floodplain risk management strategy for the Byron Shire rather than a stand-alone program.

To be eligible for consideration under the VHR scheme properties need to be:

- With floor heights below the Flood Planning Level (0.5 metres above the 1% predicted flood level).
- Not identified in a designated Voluntary House Purchase area.
- Constructed prior to 1986.
- Constructed of a material that is suitable for raising (i.e., wood, not brick).

Funding is available on a 2:1 basis. The NSW Government will fund two-thirds of the eligible cost of raising the dwelling and it is recommended that the property owner is responsible for the remaining one-third of costs.

Council is unable to financially contribute the remaining one-third to the VHR scheme as the raising is not being undertaken in compensation for other flood mitigation works, and the private owner of the property receives significant benefit from the raising of their house in the form of reduced flood exposure and potential increased property value.

Based on feedback from Council's working within the VHR Scheme, it is likely to cost approximately \$150,000 to raise a house; this is dependent on the size of the house, location, materials, labour availability and design. It is also recognised that due to the

severe and wide-reaching impacts of the AGRN1012 Storm and Flood event and the COVID-19 building boom within the Northern Rivers, that contractors and materials may be hard to source and further increase costs and or delays.

- 5 Inclusion of a property within the VHR Scheme is not necessarily confirmation that the property will be eligible for access to State Government funding. Further checks against the VHR Guidelines will be undertaken at the application stage for each property.

Attachment 1 (E2022/29988) details how the Voluntary House Raising Scheme will be managed and recognises that is entirely voluntary and properties are under no obligation to participate.

- 10 The owner of the property is responsible for managing the various activities associated with the actual raising the dwelling. Council officers will provide oversight, guidance, and administration of the VHR scheme.

The property owner is responsible for:

- 15
- Gaining the relevant development approvals.
 - Seeking quotes for raising works.
 - Engaging a suitable contractor.
 - Monitoring the works.
 - Organising certification of the works.
 - Submission of grant funding claims to Council.
- 20 It will also be a condition of approval for all raised dwellings that the areas below design flood level (the lower storey) are not to be used for habitable purposes (i.e. enclosed as bedrooms, rumpus rooms, ground floor secondary dwellings or similar). In this regard the lower level can be used as a garage and storage and in some cases a laundry. The area under the house should be left open to enable the free flow of floodwaters in the event of a flood.
- 25

Eligible and ineligible costs

Costs **eligible** for funding are those that are essential to raise the footprint of the existing habitable floor area or relocate the existing dwelling to a location on higher ground within the same lot (as applicable). Such costs include but are not limited to:

- 30
- plan and document preparation, including survey costs
 - development application costs
 - site preparation costs
 - disconnection of services and provision of temporary services (water, electricity, communications, gas and stormwater, including rainwater tanks)
- 35
- preparation for and raising of the floor to the required minimum flood design level
 - installation of supporting structure for the elevated floor
 - reconnection of services
 - the installation of front and back doorsteps or ramp and associated safety

rails/devices

- costs associated with inspection and approval by the council
- relocating the house to an appropriate site within the same property if this is considered the most cost-effective option to meet the required minimum design floor level.

5

Costs which are **not eligible** for funding include but are not limited to:

- any additional features, improvements, renovations and substitutions of services requested by the homeowner, such as landscaping and concrete floor to the understorey
- raising the property above the minimum design floor level that is required
- accommodation for the homeowner while works are being done
- remedial works to the house
- expenses incurred prior to a funding agreement being entered (unless otherwise agreed to in writing by the department).

10

15

(Source: <https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Water/Coast-estuary-and-flood-grants/floodplain-management-program-guidelines-voluntary-house-raising-schemes-220095.pdf?la=en&hash=B11D5E75BE8DC1D17B0C1C7BBAE74B471160E9F9>)

20

These details are also being reported to the 16 June 2022 Floodplain Management Advisory Committee meeting. It is recommended that Council do not make any formal recommendations on the Voluntary House Raising scheme until the committee have considered the scheme and have made recommendations to Council.

Strategic Considerations

Community Strategic Plan and Operational Plan

25

Aligned within upcoming 2022-23 Delivery Program:

3.3.2 Floodplain Management – Mitigate the impact of flooding on private and public property.

An additional Operational Plan Activity will need to be included.

Recent Resolutions

22-001 Resolved:

That Council notes the report and Attachment 1 (#E2022/30893) for Byron Shire Council's grant submissions as of 31 March 2022.

That Council receives a report in June on the Voluntary House Raising Scheme detailing the process and co-contribution funding requirements. (Dey/Lyon)

Financial Considerations

- 5 No Council financial contributions are recommended; however, staff resourcing to manage the funding and provide guidance on the house raising will be required. Feedback from neighbouring Tweed Shire has advised that it can take up to 3 years for house raising to occur: from grant application to construction completion.

Consultation and Engagement

- The Voluntary House Raising Scheme is managed as per the NSW Department of Planning and Environment Floodplain Management Program Guidelines.
- 10 Council considered the property owner contribution at a recent Strategic Planning Workshop on 2 June 2022.

REPORTS OF COMMITTEES - CORPORATE AND COMMUNITY SERVICES

Report No. 14.1 Report of the Audit, Risk and Improvement Committee Meeting held on 19 May 2022

5 **Directorate:** Corporate and Community Services

Report Author: Mila Jones, Governance and Internal Audit Coordinator

File No: I2022/569

Summary:

10 This report provides the minutes of the Audit, Risk and Improvement Committee Meeting of 19 May 2022 for determination by Council.

Note that attachment numbers are included in the recommendations below.

15 **RECOMMENDATION:**

1. **That Council notes the minutes of the Audit, Risk and Improvement Committee Meeting held on 19 May 2022.**

2. **That Council adopts the following Committee Recommendation:**

Report No. 3.1 Minutes from Extraordinary Audit, Risk and Improvement Committee of 21 October 2021

File No: I2021/1693

Committee Recommendation 3.1.1

That the minutes of the Audit, Risk and Improvement Committee (Extraordinary) Meeting held on 21 October 2021 be confirmed.

3. **That Council adopts the following Committee Recommendation:**

Report No. 4.1 Election of Chairperson, Committee Overview and the Internal Audit Plan 2021-2024

File No: I2022/342

Committee Recommendation 4.1.1

That the Audit, Risk and Improvement Committee:

- 1. Appoints Michael Georghiou as the Committee's Chairperson.**
 - 2. Notes sections 1 and 2 of the Three Year Strategic Internal Audit Program (2021-2024) (Attachment 1 E2022/33306) and that the proposed plan for Q4 2021-2022 and Q1 of 2022-2023 be endorsed for approval by Council (Attachment 2 E2022/33747). A report is to be provided to the Committee at the next meeting on the plan for the remainder of 2022-2023 and 2023-2024.**
 - 3. Endorses for approval by Council that the Audit Plan for 2022-2023 is to include the optional Credit/Corporate Card audit.**
- 4. That Council adopts the following Committee Recommendation:**

Report No. 4.2 Fraud and Corruption Control update
File No: I2022/474

Committee Recommendation 4.2.1

That the Audit, Risk and Improvement Committee notes the Fraud and Corruption Control update.

- 5. That Council adopts the following Committee Recommendation:**

**Report No. 4.3 Audit, Risk and Improvement Committee Performance
Assessment for 2021**
File No: I2021/1589

Committee Recommendation 4.3.1

That pursuant to Clause 10 of the Constitution of the Audit, Risk and Improvement Committee that the Audit, Risk and Improvement Committee notes the annual report of the Chair to Council.

- 6. That Council adopts the following Committee Recommendation:**

Report No. 4.4 Update on delegations in place 2020-2021
File No: I2021/1665

Committee Recommendation 4.4.1

That the Audit, Risk and Improvement Committee notes this report.

7. That Council adopts the following Committee Recommendation:

Report No. 4.5 Status of Council Policies 2020-2021

File No: I2021/1666

Committee Recommendation 4.5.1

That the Audit, Risk and Improvement Committee notes the status of Council's policies as provided in this report.

8. That Council adopts the following Committee Recommendation:

**Report No. 4.7 Draft Audit, Risk and Improvement Committee Constitution and
2022 Agenda Schedule**

File No: I2022/340

Committee Recommendation 4.7.1

That the Audit, Risk and Improvement Committee:

- 1. Defers consideration of the constitution to receive feedback from the Committee and that the Constitution be reported back to the Committee with feedback prior to being reported to Council for adoption.**
- 2. Endorses the Agenda Schedule for 2022 (Attachment 2 E2022/32044) subject to consideration of financial information being received by the Committee members.**

9. That Council adopts the following Committee Recommendation:

Report No. 5.3 Cyber Security and IT System Outages Quarterly Update

File No: I2021/1761

Committee Recommendation 5.3.1

That the Audit Risk and Improvement Committee:

- 1. Notes the report.**
- 2. Receives ongoing cyber security and system outage status reports.**

10. That Council adopts the following Committee Recommendation:

Report No. 5.4 2021 Year End Audit Management Letter
File No: I2021/1774

Committee Recommendation 5.4.1

That the Audit, Risk and Improvement Committee recommends to Council:

That the comments provided by Management in response to issues raised in the 2021 Year End Audit Management Letter (E2021/134318) be noted by Council.

11. That Council adopts the following Committee Recommendation:

Report No. 5.6 Internal Audit Report - 2021-2022 Quarters 2 and 3
File No: I2022/147

Committee Recommendation 5.6.1

- 1. Notes the Summary of Internal Audit Recommendations for Quarter 2 2021-2022 (Attachment 1 E2022/15709) and Quarter 3 2021-2022 (Attachment 2 E2022/37933).**
- 2. Endorses the recommendations from the Executive Team to close off 23 internal audit recommendations from Quarters 2 and 3 2021-2022 as listed in Table 1 of this report (which is a summary from Attachment 3 E2022/8328 and Attachment 4 E2022/33146).**
- 3. Recommends to Council that management be requested to implement the recommendations made in the Internal Audit of Pay Parking – February 2022 (Attachment 5 E2022/10589) and the Internal Audit of Cyber Security – April 2022 (Attachment 6 E2022/39688)**

12. That Council adopts the following Committee Recommendation:

Report No. 5.8 2021-2022 External Audit Engagement Plan
File No: I2022/377

Committee Recommendation 5.8.1

That Council notes the External Audit Engagement Plan prepared by the Audit Office of New South Wales for the year ended 30 June 2022 as outlined in Confidential Attachment 1 (E2022/35065).

13. That Council adopts the following Committee Recommendation:

Report No. 5.9 Cyber Security and IT System Outages Quarterly Update
File No: I2022/394

Committee Recommendation 5.9.1

That the Audit Risk and Improvement Committee:

- 1. Notes the report**
- 2. Receives ongoing cyber security and system outage status reports**


14. That Council adopts the following Committee Recommendation:

Report No. 5.10 Financial Recognition of Rural Fire Service Equipment Assets
File No: I2022/416

Committee Recommendation 5.10.1

That the Audit Risk and Improvement Committee recommends to Council that Byron Shire Council does not record the value of Rural Fire Service equipment assets in its financial records and financial statements that it does not control.

Attachments:

- | | | |
|----|---|---|
| 5 | 1 | Minutes 19/05/2022 Audit, Risk and Improvement Committee, I2022/540  |
| | 2 | Confidential - Internal Audit Plan 2022-2024, E2022/33747 |
| | 3 | Confidential - 2021 End of Year Audit Management Letter received from Audit Office of NSW, E2021/134818 |
| | 4 | Confidential - Byron Shire Council - Pay Parking Review, E2022/10589 |
| 10 | 5 | Confidential - Byron Shire Council - Cybersecurity Review, E2022/39688 |
| | 6 | Confidential - Annual Engagement Plan 2022 from NSW Audit Office, E2022/35065 |

Report

The attachment to this report provides the minutes of the Audit, Risk and Improvement Committee Meeting of 19 May 2022 for determination by Council. The agenda for this meeting can be located on Council's website at:

- 5 https://byron.infocouncil.biz/RedirectToDoc.aspx?URL=Open/2022/05/ARIC_19052022_AGN_1546_WEB.htm

- 10 The attachment numbers included in the recommendations to this report is the numbering that was applicable to the Audit, Risk and Improvement Committee Meeting Agenda. However relevant confidential attachments from that Agenda have been included with this report for Council's information. The non-confidential attachments are available at the link provided above.

Relevant confidential attachments include:

- 15 Report 4.1 Attachment 2 – This has been included as Attachment 2 to this report
Report 5.4 Attachment 1 – This has been included as Attachment 3 to this report
Report 5.6 Attachment 5 – This has been included as Attachment 4 to this report
Report 5.6 Attachment 6 – This has been included as Attachment 5 to this report
Report 5.8 Attachment 1 – This has been included as Attachment 6 to this report

Note that the following reports were deferred to the next Audit, Risk and Improvement Committee:

- 20 Report No. 5.1 CONFIDENTIAL - Quarter 1 - 2021-22 Internal Audit Report
Report No. 5.5 CONFIDENTIAL - External Audit Actions Quarter 1 2021-2022 Update
Report No. 5.11 CONFIDENTIAL - Social Engineering Incident - Reporting of Independent Investigation

- 25 Also note that the following reports were not dealt with at the meeting and were not deferred to the next meeting as the information is historical and a more recent update has been provided to the Committee:

- 30 Report No. 4.6 2021/22 Operational Plan Report - Q1 - September 2021
Report No. 4.8 Operational Plan 2021/22 Quarter 3 Report - Q3 - 1 January to 31 March 2022
Report No. 4.9 Delivery Program - Workshop Session
Report No. 5.2 Confidential - Quarter 1 - 2021-22 Risk Report
Report No. 5.7 Confidential - External Audits Update

Financial Implications

- 35 As per the Reports listed within the Audit, Risk and Improvement Committee Meeting of 19 May 2022.

Statutory and Policy Compliance Implications

As per the Reports listed within the Audit, Risk and Improvement Committee Meeting of 19 May 2022.

Report No. 14.2 Report of the Finance Advisory Committee Meeting held on 19 May 2022

Directorate: Corporate and Community Services

Report Author: James Brickley, Manager Finance

5 **File No:** I2022/718

Summary:

This report provides the minutes and recommendations of the Finance Advisory Committee Meeting held on 19 May 2022 for resolution by Council.

10

RECOMMENDATION:

1. That Council notes the minutes of the Finance Advisory Committee Meeting held on 19 May 2022.

15

2. That Council adopts the following Committee Recommendations:

Report No. 4.1 Budget Review - 1 January 2022 to 31 March 2022

File No: I2022/531

Committee Recommendation 4.1.1

That the Finance Advisory Committee recommends to Council:

1. That Council authorises the itemised budget variations as shown in Attachment 2 (#E2022/43292) which include the following results in the 31 March 2022 Quarterly Review of the 2021/2022 Budget:
 - a) General Fund – \$354,500 decrease to the Estimated Unrestricted Cash Result
 - b) General Fund - \$9,405,900 increase in reserves
 - c) Water Fund - \$1,021,300 increase in reserves
 - d) Sewerage Fund - \$100,400 increase in reserves
2. That Council adopts the revised General Fund Estimated Unrestricted Cash

BYRON SHIRE COUNCIL

REPORTS OF COMMITTEES - CORPORATE AND COMMUNITY SERVICES

14.2

Result of \$126,500 for the 2021/2022 financial year as at 31 March 2022.

Attachments:

- 5 1 Minutes 19/05/2022 Finance Advisory Committee, I2022/546

Report

The Attachment to this report provides the minutes of the Finance Advisory Committee Meeting of 19 May 2022 for determination by Council. The agenda for this meeting can be located on [Council's website](#).

5 Committee Recommendations

The Committee considered a report that outlined Council's estimated financial position for the 2021/22 financial year, reviewed as at 31 March 2022.

- 10 The 31 March 2022 Quarterly Budget Review illustrates a number of budget variations representing works not likely to be completed this financial year due to the impact of the February/March 2022 flood events. These works have been incorporated into the draft 2022/2023 budget currently on public exhibition at the time of this meeting of the Finance Advisory Committee.

- 15 The budget position of Council has increased to a deficit of \$391,100 with the major contributors to that being a further reduction in interest revenues of \$150,000 and Council setting aside its contribution to flood recovery works associated with the February/March 2022 flood event in accord with the Natural Disaster Funding Guidelines of approximately \$182,000 at this stage.

Financial Implications

As per the Reports listed within the Finance Advisory Committee Meeting of 19 May 2022.

20 Statutory and Policy Compliance Implications

As per the Reports listed within the Finance Advisory Committee Meeting of 19 May 2022

Report No. 14.3 Report of the Heritage Advisory Committee Meeting held on 21 April 2022

5 **Directorate:** Sustainable Environment and Economy

Report Author: Noreen Scott, EA Sustainable Environment and Economy

File No: I2022/542

Summary:

- 10 The attachment to this report provides the minutes of the Heritage Advisory Committee Meeting of 21 April 2022 for determination of Council.

RECOMMENDATION:

- 15 1. **That Council notes the minutes of the Heritage Advisory Committee Meeting held on 21 April 2022.**

2. **That Council adopts the following Committee Recommendation(s):**

Report No. 3.1 Delivery Program - Workshop Session
File No: I2022/368

Committee Recommendation 3.1.1

That the Heritage Advisory Committee provide input into the development of the draft Delivery Program 2022-26.

Heritage Advisory Committee members to provide submissions on the draft Delivery Program during the exhibition period May June 2022.

3. **That Council adopts the following Committee Recommendation(s):**

Report No. 3.2 Review Constitution of Heritage Advisory Committee

BYRON SHIRE COUNCIL

REPORTS OF COMMITTEES - SUSTAINABLE ENVIRONMENT AND ECONOMY 14.3

File No: I2022/359

Committee Recommendation 3.2.1

That the Heritage Advisory Committee recommend to Council to amend the constitution at Attachment 1 E2021/148702.

Under heading No 7 Quorum

Amend to read as follows:

“A quorum is to constitute at least half the number of voting members, one of which is to be a Councillor”. and delete the rest of the sentence.

Under heading No 5 – Membership

Change from “Membership is to:”, “Membership may include:”.

4. That Council adopts the following Committee Recommendation(s):

Report No. 3.3 Heritage Advisor Annual Report 2021-2022

File No: I2022/360

Committee Recommendation 3.3.1

That the Heritage Advisory Panel endorse the presentation from Council’s Heritage Advisor regarding the FY21/22 Heritage Advisor Annual Report with a Final draft to follow by mid May 2022. (# E2022/36033).

That Council staff to consider moving the next Heritage Advisory Committee meeting to the 30 June 2022.

Attachments:

- | | | | |
|---|---|---|---|
| 5 | 1 | Minutes Heritage Advisory Committee Meeting held 21 April 2022, I2022/396 |  |
| | 2 | Draft Review Constitution of Heritage Advisory Committee, E2021/148702 |  |

Report

The attachment to this report provides the minutes of the Heritage Advisory Committee Meeting of 21 April 2022 for determination by Council. The agenda for this meeting can be located on Council's website at:

- 5 [Agenda of Heritage Advisory Committee Meeting - Thursday, 21 April 2022 \(infocouncil.biz\)](#)

Financial Implications

As per the Reports listed within the Heritage Advisory Committee Meeting of 21 April 2022.

Statutory and Policy Compliance Implications

- 10 As per the Reports listed within the Heritage Advisory Committee Meeting of 21 April 2022.

Report No. 14.4 Report of the Biodiversity Advisory Committee Meeting held on 19 May 2022

Directorate: Sustainable Environment and Economy

Report Author: Michelle Chapman, Project Support Officer

5 **File No:** I2022/638

Summary:

This report provides the minutes of the Biodiversity Advisory Committee held on 19 May 2022 for determination by Council.

- 10 Determination is required for adoption of the Constitution and renewal of the Memorandum of Understanding between Brunswick Valley Landcare and Council.

RECOMMENDATION:

- 15 1. That Council notes the minutes of the Biodiversity Advisory Committee Meeting held on 19 May 2022.

2. That Council adopts the following Committee Recommendation:

Report No. 4.2 Review Constitution of Biodiversity Advisory Committee
File No: I2022/471

Committee Recommendation 4.2.1

1. That the Biodiversity Advisory Committee recommends to Council to adopt the constitution at Attachment 1 (E2021/147945) with an amendment to the number of community members of up to 5.
 2. That the Biodiversity Advisory Committee elects Cr Sarah Ndiaye as Chair.
3. That Council adopts the following Committee Recommendation:

Report No. 4.7 Renewal of MOU with Brunswick Valley Landcare

BYRON SHIRE COUNCIL



REPORTS OF COMMITTEES - SUSTAINABLE ENVIRONMENT AND ECONOMY 14.4

File No: I2022/485

Committee Recommendation 4.7.1

That the Biodiversity Advisory Committee recommends to Council that the Memorandum of Understanding between Brunswick Valley Landcare and Byron Shire Council (Attachment – E2021/121393) be endorsed.

Attachments:

- 1 Minutes 19/05/2022 Biodiversity Advisory Committee, I2022/545 
- 5 2 DRAFT Biodiversity Advisory Committee Constitution 2022, E2021/147945 
- 3 Brunswick Valley Landcare (BVL) Memorandum of Understanding (MOU), E2021/121393 

Report

The attachment to this report provides the minutes of the Biodiversity Advisory Committee Meeting of 19 May 2022 for determination by Council. The agenda for this meeting can be located on Council's website at:

- 5 https://byron.infocouncil.biz/RedirectToDoc.aspx?URL=Open/2022/05/BAC_19052022_A_GN_1503_AT_EMBEDDED.PDF

The committee recommendations are supported by management and are provided in the attachment to this report.

Financial Implications

- 10 As per the Reports listed within the Biodiversity Advisory Committee Meeting of 19 May 2022.

Statutory and Policy Compliance Implications

As per the Reports listed within the Biodiversity Advisory Committee Meeting of 19 May 2022.

REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES

**Report No. 14.5 Report of the Moving Byron Advisory
Committee Meeting held on 19 May 2022**

5 **Directorate:** Infrastructure Services

Report Author: Shelley Flower, Executive Assistant IS

File No: I2022/652

Summary:

- 10 The attachment to this report provides the minutes of the Moving Byron Advisory Committee Meeting of 19 May 2022 for determination by Council.

RECOMMENDATION:

- 15 1. **That Council notes the minutes of the Moving Byron Advisory Committee Meeting held on 19 May 2022.**

2. **That Council adopts the following Committee Recommendation:**

Report No. 3.1 Committee Constitution
File No: I2022/468

Committee Recommendation 3.1.1

That Council support the Moving Byron Advisory Committee in ratifying the draft Committee Constitution.

3. **That Council adopts the following Committee Recommendation:**

Report No. 3.2 Delivery Program - Workshop Session
File No: I2022/518

Committee Recommendation 3.2.1

That Council support the Moving Byron Advisory Committee in providing input

into the development of the draft Delivery Program 2022-26.

4. That Council adopts the following Committee Recommendations:

**Report No. 3.3 Moving Byron Integrated Transport Strategy 2022 to 2042 -
Results of Community Consultation**

File No: I2022/148

Committee Recommendation 3.3.1

That the Committee recommends that Council note:

- 1. The report and the comments received from the exhibition period.**
- 2. The Moving Byron Committee will receive a further detailed report that provides:**
 - a) commentary on each of the comments received during the exhibition period**
 - b) commentary on comments received from TfNSW**
 - c) an updated Moving Byron document for consideration**
 - d) details on the resourcing requirements in relation to the Moving Byron Action Plan**
- 3. An invitation will be extended to Transport for NSW to attend the next Moving Byron Advisory Committee meeting or to nominate a time prior when they are able to attend.**

Attachments:

- 5 1 Minutes 19/05/2022 Moving Byron Advisory Committee, I2022/534 

Report

The attachment to this report provides the minutes of the Moving Byron Advisory Committee Meeting of 19 May 2022 for determination by Council. The agenda for this meeting can be located on Council's website at:

- 5 https://byron.infocouncil.biz/Open/2022/05/MBAC_19052022_AGN_1527_AT_EMBEDDED.PDF

Committee Recommendation

That Council notes the minutes of the Moving Byron Advisory Committee Meeting held on 19 May 2022.

10 Financial Implications

As per the Reports listed within the Moving Byron Advisory Committee Meeting of 19 May 2022.

Statutory and Policy Compliance Implications

- 15 As per the Reports listed within the Moving Byron Advisory Committee Meeting of 19 May 2022.

Question with Notice No. 15.2 Council's 14 other sites for Resilience NSW

File No: I2022/670

5

Cr Dey asks the following question:

10 *What are the other 14 locations considered on the list of 16 for provision to Resilience NSW for them to use for Temporary Housing for people displaced by the 2022 floods, what are the constraints on the use of each of the 14 sites and what is the likely timeframe for each to become available?*

Response Director Sustainable Environment and Economy:

15 The NSW Housing Taskforce (a cross-agency group within the NSW Government Flood Recovery Governance structure) was set up to address the short- medium- and long-term housing issues arising out of the 2022 Flood events.

The establishment of emergency accommodation in the form of pod villages for those displaced by the Flood Events has and continues to be an immediate priority of the Taskforce.

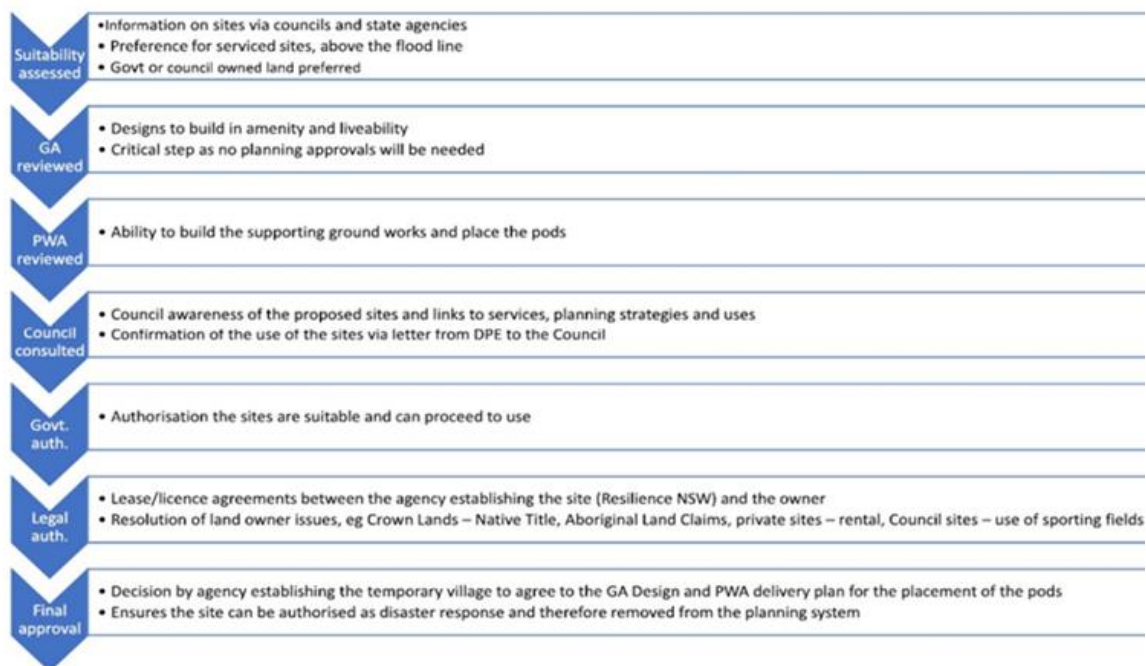
20 To this aim, each impacted council was asked to provide a list of potential sites (on council or crown land) that could be used for emergency accommodation in the form of pod villages.

25 A number of sites were identified by staff across the Byron Shire. There are three known sites in Byron Shire currently being progressed. Two are council land in Brunswick Heads. These two sites were the subject of a recent report to council.

30 This wider list of sites however is not a public list, reason being that not all the sites have been assessed as suitable, ready, or fit for purpose for a pod village. The process for a pod village is set by the Housing Taskforce, a process which Council is asked to observe. This includes not disclosing the locations of potential sites until such time as due diligence and the pod village authorisation process is completed. See 'Pop Up Village approval process' diagram below.

35 No other sites have been nominated or progressed by the Housing Taskforce in Byron Shire for pop up villages by this process at this time.

Pop-Up Village approval process



Question with Notice No. 15.3 Recent earthworks in Main Arm

File No: I2022/680

5 Cr Duncan Dey asks the following question:

Are earthworks of the type shown in Image #2 below, on the grounds of Upper Main Arm Public School, exempt from erosion control measures by way of being done by a state department?



10 Image #1: the school grounds after flooding in 2022.



Image #2: the school grounds on 2 June after earthworks.

Response Director Sustainable Environment and Economy:

Sediment and erosion controls are required for the earthworks shown above.

- 5 The Infrastructure Coordinator of the Department of Education Tweed/Byron area was contacted by staff following receipt of these photos from Councillor Dey on 8 June 2022. In response sediment and erosion controls were to be put in place 9 June 2022. Staff were advised that once the area is clear and clean it will be resurfaced with turf.

CONFIDENTIAL REPORTS - INFRASTRUCTURE SERVICES

Report No. 16.1 **CONFIDENTIAL - Land Acquisition Matters for the Purpose of Road Reconstruction Main Arm and Palmwood Road**

Directorate: Infrastructure Services

Report Author: Deanna Savage, Roads and Property Officer
Cesar Giraldo, Project Engineer

File No: I2022/115

Summary:

This report is being presented to Council to agree a way forward in relation to completing the potential acquisition of land or possible land swap agreement for Part Lot 1 DP 127158 and Part Lot 50 DP 755722 for road purposes, namely the road reconstruction of the intersection of Main Arm and Palmwood Roads.

RECOMMENDATION:

1. That pursuant to Section 10A(2)(c) of the Local Government Act, 1993, Council resolve to move into Confidential Session to discuss the report Land Acquisition Matters for the Purpose of Road Reconstruction Main Arm and Palmwood Road.
2. That the reasons for closing the meeting to the public to consider this item be that the report contains:
 - a) information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business
3. That on balance it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as:

Requires the discussion of land valuations and land swap agreements under negotiation with the landowners for the acquisition of land for road purposes.

Attachments:

- 1 SPG Val 847-21 - Part Lot 1 DP127158 Part Lot 50 DP755722 Main Arm Road Main Arm NSW 2482 - JUST TERMS COMPENSATION engaged by Council, E2022/29867
- 2 Compensation Valuation Eastpoint Valuations Part Lot 1 DP 127158 Part Lot 50 DP 755722 Main Arm Road Reconstruction landowner engaged, E2022/29868

Report No. 16.2 CONFIDENTIAL - WCC Engineers Procurement

Directorate: Infrastructure Services

Report Author: Kirk Weallans, Project Engineer

File No: I2022/688

5 Summary:

WCC Engineers are a Principal Geotechnical Engineering company that were engaged a single source supplier by Council in early March 2022 due to their immediate availability to undertake emergency works as part of the recent declared disaster event (28 February 2022 Floods) (pursuant to s55(k) of the *Local Government Act 1993* (LG Act). The flood event was declared a Natural Disaster ([AGRN 1012](#)) and a three month Emergency Declaration was made by the Governor General from 11 March 2022 to 11 June 2022 (Attachment 1).

RECOMMENDATION:

- 5 1. That pursuant to Section 10A(2)(c) and (d)i of the Local Government Act, 1993,
Council resolve to move into Confidential Session to discuss the report WCC
Engineers Procurement.
- 10 2. That the reasons for closing the meeting to the public to consider this item be
that the report contains:
- a) information that would, if disclosed, confer a commercial advantage on a
 person with whom the Council is conducting (or proposes to conduct)
 business
- b) commercial information of a confidential nature that would, if disclosed
 prejudice the commercial position of the person who supplied it
- 15 3. That on balance it is considered that receipt and discussion of the matter in
open Council would be contrary to the public interest, as it contains
commercial information

Attachments:

- 1 National Emergency Declaration, E2022/45079
- 2 Local Government (General) Amendment Regulation 2022, E2022/54216